

**C A S E**  
**OF THE**  
**RIGHT HON. ALEXANDER,**  
**EARL OF STIRLING AND DOVAN,**  
**RESPECTING**  
**HIS LORDSHIP'S TITLE TO NOVA SCOTIA,**  
**AND OTHER**  
**TERRITORIAL POSSESSIONS IN NORTH AMERICA:**  
**CONTAINING**  
**A NARRATIVE**  
**OF THE**  
**Proceedings taken on his Lordship's behalf**  
**FOR THE RESTITUTION OF THE PROPERTY,**  
**WITH OBSERVATIONS THEREON.**

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**BY J. I. BURN, Esq.**

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## ADVERTISEMENT.

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It will be seen by the attentive Reader that the Peerage dignity in Lord Stirling is not commented on in this Exposition: neither has it been deemed proper to go into evidence of descent. In both cases the proofs have been submitted to the proper tribunals in Scotland, and both fully proved; why either is now disputed, is another question. As far as regards the title to Territory in Nova Scotia and the Canadas, the following pages go fully into the subject, and this is the main one handled; the title to territories being wholly independent of the title to honours. It may not, however, be amiss to remark, as Lord Stirling has met with such unusual hostility from the Government, that the Peerage dignity vested in him is as firmly founded, and as well entitled to recognition in England, as that of the Earl of Newburgh, Earl of Cassilis, Earl of Dundonald, Earl of Kintore, Earl of Breadalbane, Earl of Stair, Viscount Arbuthnot, Lord Reay, &c. &c. none of whom have gone to the House of Lords for confirmation of title.

By the Act of Union between England and Scotland, it will be readily admitted that the laws of Scotland were reserved to that portion of the empire as of an independent country. It is apprehended that it requires the whole power of the Legislature—of King, Lords and



**Commons**—to alter any portion of the laws of Scotland ; and it should follow, as a natural and fair and obvious inference, that no single branch of the Legislature contains within itself the privilege of doing so without consent of the others. Whatever rights may be inherent and of general usage in either House of Parliament, during their sittings and over their respective members, cannot in fairness be extended beyond their own walls, or affect other than their own members, when neither interference with or breach of their high privileges is attempted or committed.

On these grounds nothing has led the author to deviate from his plan of laying before the reader a case of very extraordinary interest, as it regards the extensive territorial claims of Lord Stirling, and nothing, on the other hand, has been omitted to show succinctly the solid basis on which they are founded. It was intended to introduce into the text some of the documentary evidence in the Appendix, but part of the Work had been printed off wherein it could best have been introduced before it came to hand ; there was then no choice left but to place it for reference at the end.

J. I. BURN.

4, *Raymond Buildings, Gray's Inn,*  
*January, 1833.*

## INTRODUCTION.

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**THE** following exposition of Lord Stirling's Claims and Title, partakes so much of what is singular and romantic, that the general reader may derive more entertainment, probably, in the perusal of it, than so dry a subject is often calculated to produce. It is, moreover, one of public, as well as of private interest, to which, in many respects, every subject of the British crown may be invited to pay attention.

Nova Scotia, with other most extensive territories in North America, were granted by King James I. and King Charles I., as Kings of Scotland, to the first Earl of Stirling, and the Charters were all confirmed in the Parliament of Scotland in 1633, the several Charters bearing date 1621, 1625, and 1628.

The territories so granted, though immense in point of extent, were really then of very little value.

The first Earl, the grantee, spent a much finer estate in Scotland in the vain and fruitless attempt to colonize Nova Scotia. About this time, also, the troubles at home broke out, and the irruption of the French abroad completed the destruction of his views, and of his family. Thus circumstanced, it is no wonder that the attempt on the part of this family was laid aside, for even the Government was then powerless abroad, as it was helpless at home. In process of time, however, the country was again restored to the Crown formally, at the treaty of Utrecht in 1713, and with still greater formality, relinquished at the general peace of 1763. On what ground was it so restored by the French, who had usurped the possession? On the sole ground of the Charters, which were produced, and contained in them the proofs of the property being in the Scottish Crown at the time of the grants to the first Earl. Anterior to 1763, the colony, if it may be so called, was very little thought of, and very little worthy of public attention, a much more extensive and fertile portion of America at that time belonging to the Crown. What chance, then, had the Stirling family, during the period aforesaid, to deal with the lands still vested in them? Could they single-handed encounter the French? Could they undertake the task of adverse colonization, having failed when comparatively rich and unimpeded? Could they find parties to unite with them

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in the hopeless and, probably, fruitless experiment, with the example of the first Earl's failure before their eyes? The title then remained in them—the power to make use of it for the time taken away. To make the estate—this immense estate—valuable, the country must be peopled. Every location upon the original waste was, in one sense of the term, advantageous to the Stirling family, in making the remainder, though lessened in extent, of more worth in effect. The country of late years has become infinitely more valuable by the continued increase of its population; and now comes the question, and a most important one it is,—viz. Who is to reap the benefit arising from the new locations? Who is to sell, and receive the purchase money? Who has the legal right to do this? And how, in fact does the matter stand in this respect? By the Charters already referred to, confirmed, as has been stated, in the Scottish Parliament, the estate was inalienably granted to the first Earl and his heirs, as will be more fully shown hereafter. They could not forfeit, but they could sell their lands. Non-user, non-entry, omission of a duty, or commission of a fault, were all saved to the parties in the Charters, and for the best reason in the world—the first Earl having actually paid more for the colony than it was worth. It was naturally concluded by the present claimant, who has been regularly enfeoffed according to law in the territories, that he would

meet with no impediment to the exercise of his rights by the Government. To prevent either doubt or difficulty, however, he instructed his agents to open a communication with the Colonial Office on terms of mutual accommodation and arrangement—that is, a vast portion of his Lordship's estate had been already disposed of, and other portions daily required for the continued emigration from the mother country, and it was thought, and justly so, that compromise was indispensable for the interests of all parties, public and private. Behold, however, how this was met. Without any single reason assigned, the claims of Lord Stirling were wholly denied, and he was informed would be resisted. Driven to conjecture the ground of this determination, he was driven to examine more minutely into his own resources also. The further he has yet proceeded, the more securely does he rest on the validity of his title. The Charters that gave it are the instruments brought forward, as we have seen on various occasions, to prove a prior title in the Crown to any other potentate, and they were used so recently as in the reference between this country and the United States to the King of Holland, as to boundary, in the last reign.

The denial then amounts to this:—We, the Government, having the possession, will use the power against you, Lord Stirling, without adverting to your title, and sell and dispose of your estate as we

think fit: your rights we wholly deny and resist. And yet what does it amount to in regard to actual benefits to the State or to the individual? In the first sale, merely, the whole difference to both parties is included. A location, effected by the Government or by Lord Stirling, is afterwards solely and wholly beneficial to the Government alone. Lord Stirling, after his sale to any one, has no further interest to look after—not so the Government. Every advantage of colonization is equally secured to the Government, whether the first act be theirs or his Lordship's. The people are equally subjects by whomsoever introduced; they are equally consumers of our manufactures. Traders, as any others, and in every possible relation and respect serviceable to the mother country. Here, then, the best interests of Government may be truly said to commence in the newly planted colony and its increasing population, as population; not merely buyers of allotments in the first instance. Here, again, Lord Stirling's interests end, for having sold the allotments, he has nothing more to do with the territory, which falls then under its natural and legitimate dominion, the Government at home. We challenge any man to say whether this be not a fair statement of the respective positions of the parties. If so, we challenge any man again to say whether it is becoming in this great country to pocket the paltry emolument of the sales of waste

land thus circumstanced,—the property, the purchased property, of the first Earl of Stirling, and now vested in his descendant. This is the sole point of collision, the single ground of difference—the meagre advantage on the one hand, the tremendous sacrifice on the other—the gain of a sum to the Government of comparative insignificance, the loss to the Stirling family of their whole estate.

Ought this so to be? Is it consistent? Is it reasonable? Is it just? or, is it oppressive?

## NARRATIVE, &c.

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### CHAPTER I.

*Substance of a Correspondence with the Colonial Office  
on the Claims of Lord Stirling.*

IT was deemed advisable on the part of Lord Stirling, to endeavour by all practicable means to effect a fair, temperate, and reasonable settlement of his Lordship's rights with the Colonial Office, on terms advantageous, as it was thought, to all parties interested. With these views the following letter was addressed by his Lordship's advisers and sent to Lord Viscount Goderich.

“ MY LORD,

“ The claims of Lord Stirling, under Charters granted to his ancestor Sir William Alexander, by King James and King Charles the First, of the province of Nova Scotia, and other territorial possessions in America, are probably not unknown to your Lordship: they are of the most extensive nature. We are instructed on the part of his Lordship to open a negotiation with the Government, having for its object a full and satisfactory adjustment of claims and titles, on principles of reciprocal advantage.



"The Government and his Lordship united have clearly the undisputed power over the territories contained in the Charters, to deal with them as may be deemed expedient: the interests of each appear to be best consulted and secured on a basis of mutual accommodation; so also the object for which the Charters were originally designed. If your Lordship shall be of opinion that an amicable adjustment is desirable, we shall then most readily and respectfully attend to any suggestion your Lordship may make, with a view to the accomplishment of the proposed end.

"Our most anxious wish is to combine the public service with the great duty we owe to our noble client's interest, and we think they are intimately blended together.

"We have the honour to be,

"My Lord, &c."

The letter remained unnoticed for several weeks, and on writing again in reference to it, a note from Lord Howick, of the 23rd of January, stated that no communication had been received at the Colonial Office from Lord Stirling's solicitor, another copy was therefore, without loss of time, transmitted to Lord Viscount Howick the next day.

On the 31st the following letter, addressed to Mr. Burn, was duly received:

"SIR,

"I have received, and have laid before Viscount Goderich your letter to myself, of the 24th instant, and I have received his Lordship's directions to acknowledge the receipt of a letter addressed to him by yourself in the name of your firm, dated December, 1831, in regard to certain claims on the British territory in North America,

advanced by the gentleman who assumes the title of Earl of Stirling.

" Lord Goderich directs me to say for your information, that his Majesty's Government decline to enter into any negotiation *which*\* yourself or your client on the subject of his claims.

" Lord Goderich is of opinion that no advantage, public or private, is to be anticipated from prolonging the correspondence which your client has opened with this department respecting his claims, but that he should be distinctly apprised that they are, and will be, altogether denied and resisted.

" I am, &c."

To this letter containing, as it appeared to Lord Stirling's advisers, a misapprehension (to give it the mildest term) on a vital point of his title, the following reply was sent on the 3rd of February following.

" MY LORD,

" After the prompt and peremptory refusal to enter into any negotiation with Lord Stirling or Mr. Burn relative to his Lordship's claims in British America, we should not have presumed to write again, but for a serious mistake or misapprehension on the part of the Colonial Office. Lord Stirling is described by your Lordship as "the gentleman who assumes the title of Earl of Stirling." This must be a mistake, unless your Lordship deems the law of Scotland inoperative in questions of title acquired by heirship, and found good by the proper tribunals of that country. A party taking up a peerage which may have remained dormant for a time, is not surely to be considered the less entitled to it, because his family had

\* So in original.

not resumed it. Had Lord Stirling, before such proofs and legitimate decisions on his claims in Scotland, called himself Earl of Stirling, and never gone before such tribunals there to establish the legality of the title, he would then have been the party described by your Lordship as assuming it. The laws of his country, of which his Lordship is now a recorded peer, establish then, but do not confer, a title which he by birth and common justice is bound to protect on behalf of himself and his family, nay, I may add also, of his country.

“A person claiming a dormant title, and taking it before adjudication, is, as your Lordship must well know, he who assumes it, and who may in such circumstances be well dealt with as a stranger.

“Lord Stirling will be advised necessarily to resort to every tribunal and means of redress here that may be open to him for a restoration of his rights, and publicity will accordingly be given to every material part of his proceedings. To have the Government opposed to him is, no doubt, fearful odds;—to have justice on his side, his main and almost only support. We can readily imagine, that in the pressure of public business, claims, however well founded on due enquiry, may be cast aside as interfering with more extended interests. But the very circumstance of so vast a power being centred with his Lordship’s powerful opponent, is that which more loudly calls for the strictest adherence to equity and justice. It is clear, beyond all doubt, that the theory of British legislation and government is laid on the sure foundation of perfect and impartial justice to every one. Happily it is so for the most part in practice, also; and on strict attention being paid to this particular subject, there is really nothing ultimately to deter Lord Stirling from the prosecution of his rights.

“It may be proper to state, that had an opening been

left for negotiation, Mr. Burn was instructed and prepared, on the part of his Lordship, to make the most ample concessions: the Government claiming all, certainly stops any further progress in this mode. It is, however, a small thing for Government, were it even to acquire every part of the territory in dispute, though that is every thing to the individual claiming it. The advantage, then, of a full and fair enquiry (the parties having unquestionable power) would have been manifestly important; for by such enquiry, and the arrangements consequent upon it, would have been ended many questions, at a prodigious saving of time, that will now have to be discussed and settled in a very different spirit and manner.

“Both public and private benefit seemed to be involved in the mode of meeting the subject proposed. In the distinct denial and refusal to listen to Lord Stirling’s claims, a dreadful evil is inflicted, if they be just.

“We have the honour to remain,

“My Lord, &c.”

On the 4th of February, with singular dispatch, Lord Howick writes again as follows:

“GENTLEMEN,

“I have laid before Viscount Goderich your letter of the 3rd instant, and have received his Lordship’s directions to acquaint you that it never has been, and is not now, his intention to intimate any opinion respecting the validity of the claim of your client to the earldom of Stirling; Lord Goderich conceives that, until the claimant of that title shall have established his right to the satisfaction of his Majesty, or of the House of Peers, it could not, with propriety, be recognized in any official communication written by the King’s Secretary of State, or by his direction.

"With respect to the other topics to which your letter refers, it does not appear to Lord Goderich that any advantage would accrue either to your client, or to the public at large, from his Lordship engaging in any further discussion of them.

"I am, &c."

It still appearing to Lord Stirling's advisers, that misapprehensions existed on this important subject with the Colonial Office, the following letter, the last addressed to Lord Viscount Howick, was transmitted to his Lordship on the 6th of February :

"MY LORD,

"We beg distinctly to state that there is not any disposition on our parts to prolong a correspondence little likely to lead to favourable results for our client, but again there appears to be a misapprehension on the part of the Colonial Office, that, if erroneous, should be set right. It is this, that the title of Lord Stirling as a peer, and his title as the heir of the first Earl of Stirling, to the territories claimed, being totally and entirely distinct rights, seem to be considered as identical in your Lordship's communication. With the distinction taken for not officially recognising the peerage title, it is not our business to comment or reply. That, for the present, may be therefore left out of consideration. The most important interest of the territorial property is the only one we should venture to press on your Lordship's consideration, and we do so at this period of the correspondence with reluctance, but at the same time respectfully, lest the decision given against his Lordship's claim, being mixed up with that against the title, may have induced the refusal to negotiate. Should we, however, be mistaken, and it be the fact that your Lordship has deter-

mined, in reference to both points, to end the correspondence, we have done, and shall then, as our duty requires, endeavour to substantiate Lord Stirling's rights to the fullest extent, by every other means within our power.

“ We have the honor to be,  
“ My Lord, &c.”

The correspondence ends here, and as the following pages will, in detail and argument, contain full comments thereon, none here are now deemed necessary.

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## CHAPTER II.

### *Of the Territories granted by the Charters.*

IN the Charter granted by King James I., we have the following words:—“ Reflecting with ourselves how by  
“ divine beneficence this nation is at this time numerous  
“ and thronged, and how expedient it is that it should be  
“ studiously exercised in some honest and useful employment, lest by indolence and lack of employment,  
“ it lapse into evil, it may be expedient, and we have  
“ thought it worthy of endeavour, that many should be  
“ conveyed to a new country, which they may fill with  
“ colonies, who, both by promptitude and alacrity of  
“ mind, and by strength and power of body, may dare,  
“ if any other mortals elsewhere may, to encounter any  
“ difficulties ; we think this endeavour herein especially  
“ useful for this kingdom, because it requires only  
“ transport of men and women, beasts of burden and  
“ corn ; not also of money, and may not make a disad-

“vantageous return from the merchandize of the kingdom itself at this time, when trade is so diminished as to its returns; for those causes, as well as on account of the faithful and acceptable service of our beloved councillor, Sir William Alexander, Knight, to us rendered and to be rendered, *who, first of our subjects, at his own expense, endeavoured to plant this foreign colony, and sought out for colonization the divers lands circumscribed by the limits hereinafter designated.*”

The Charter afterwards “gives, grants, and disposes to the aforesaid Sir William Alexander, his heirs or assigns whomsoever, hereditarily, all and singular the lands, continents and islands situate and lying in America, within the cape or promontory commonly called Cap de Sable, lying near the latitude of 43 degrees or thereabout, from the equinoctial line northward, from which promontory toward the sea coast, ranging to the west, to the harbour of Sancta Maria, commonly called Sanctmaries Bay, and thence northward by a right line to the entrance or mouth of that great naval station which runs out into the eastern tract of the land between the countries of the Suriqui and Stechemini, commonly called Suriquois and Stechemines, to the river, commonly called by the name of Sancta Crux, and to the remotest source or fountain on the western side of the same, which first discharges itself into the aforesaid river, and thence by an imaginary right line, which might be conceived to proceed through the land, or to run northward to the nearest naval station, river, or source, discharging itself into the great river of Canada, and proceeding from it by the sea shores of the same river of Canada eastward, to the river naval station, port, or shore, commonly known and called by the name of Gathepé, or Gaspé, and thence south east-

"ward to the islands called Bacalaos, or Cape Breton,  
 "leaving the same islands on the right, and the gulf of  
 "the said great river of Canada, or great naval station,  
 "and the lands of Newfoundland, with the islands per-  
 "taining to the same lands on the left, and thence to the  
 "cape or promontory of Cape Breton aforesaid, lying  
 "near the latitude of 45 degrees or thereabouts, and  
 "from the said promontory of Cape Breton towards the  
 "south and west to the aforesaid Cap Sable, where the  
 "circuit began, including and comprehending within the  
 "said sea coasts, and their circumferences from sea to sea,  
 "all lands, continents, with rivers, torrents, bays, shores,  
 "islands or seas lying near or within six leagues to any  
 "part of the same, on the western, northern or eastern  
 "parts of the coasts and precincts of the same, and on  
 "the south east (where Cape Breton lies) and on the  
 "southern part of the same (where Cap de Sable is) all  
 "seas and islands towards the south, within 40 leagues  
 "of the said sea coasts of the same, including the great  
 "island commonly called Isle de Sable or Sablon, lying  
 "towards the Carbas, south, south east, about 30 leagues  
 "from the said Cap Breton, in the sea, and being in the  
 "latitude of 44 degrees, or thereabouts, which lands, in  
 "all times to come, shall enjoy the name of Nova Scotia,  
 "in America, which also the aforesaid Sir William shall  
 "divide into parts and portions, as to him may seem  
 "meet, and give names to the same according to his  
 "pleasure."

Then follows the grant of mines, minerals, precious stones, and pearls, &c.

Such was the nature and extent of the territories granted to the first Earl, and the Charter of Novo Damus of the first year of King Charles the First, confirms the same, with ampler powers in favour of the Grantee and his heirs, &c. This Charter is dated 1625.



By a subsequent Charter in the third year of the said King, 1628, his Majesty " gives, grants and disposes to  
 " the foresaid Sir William Alexander, his heirs and assignees, heritably for ever, all and sundrie islands within the  
 " Gulf of Canada, lying between Nova Scotia and Newfoundland, at the mouth and entrance of the great river  
 " Canada aforesaid, where it falls and enters into the  
 " said gulf, (including therein the great island Anticosti), also we have given, granted and disposed, and  
 " by our present Charter give, grant and dispose to the  
 " beforenamed Sir William Alexander, all and sundry  
 " islands lying within the said river Canada, from the  
 " said mouth and entrance up to the head fountain and  
 " source thereof, wheresoever it be, or the lake whence it  
 " flows, (which is thought to be towards the gulf of  
 " California,) called by some the Vermilion Sea,) or  
 " within any other rivers flowing into the said river  
 " Canada, or in whatsoever lakes, waters, or arms of the  
 " sea, through which either the said great river Canada,  
 " or any of the said other rivers pass, or in which they  
 " discharge themselves. And further, we have given  
 " and granted, and, by our present Charter, give and  
 " grant to the foresaid Sir William, and his foresaids, 50  
 " leagues of bounds, on both sides the aforesaid river  
 " Canada, from the said mouth and entrance, to the said  
 " head, fountain, and source thereof; also on both sides  
 " of the said other rivers flowing into the same; as also  
 " on both sides of the said lakes, arms of the sea, or  
 " waters, through which any of the said rivers have their  
 " course, or in which they terminate; and in like manner  
 " we have given and granted, and, by our present Charter,  
 " give and grant to the foresaid Sir William Alexander,  
 " and his foresaids, all and whole the bounds and passages, as well in waters as on land, from the foresaid  
 " head, fountain, and source of (the river) Canada, where-

" soever it is, or from whatsoever lake it flows, down to  
 " the foresaid Gulf of California, whatsoever the distance  
 " shall be found to be, with 50 leagues altogether on both  
 " sides of the said passage, before the said head of (the  
 " river) Canada, and gulf of California; and likewise,  
 " all and sundry islands lying within the said gulf of  
 " California; as also, all and whole the lands and bounds  
 " adjacent to the said gulf, on the west and south,  
 " whether they be found a part of the continent or main  
 " land, or an island, (as it is thought they are,) which is  
 " commonly called and distinguished by the name of  
 " California. Moreover, we have given and granted, and,  
 " by our present Charter, give and grant, and for us and  
 " our successors, with advice and consent aforesaid (of  
 " his council,) perpetually confirm to the foresaid Sir  
 " William Alexander, his heirs and assignees, whomsoever  
 " heritably, all and sundry other lands, bounds, lakes,  
 " rivers, arms of the sea, woods, forests, and others that  
 " shall be found, conquered, or discovered, at any future  
 " time, by him or his successors, their partners, asso-  
 " ciates, or others in their name, or having power from  
 " them, upon both sides of the whole bounds and pas-  
 " sages foresaid from the mouth and entrance of the said  
 " river Canada, where it discharges itself into the said  
 " gulf of Canada, to the said gulf of California, or the  
 " islands in the seas thereto adjacent, which are not yet  
 " really and actually possessed by others, our subjects, or  
 " the subjects of any other Christian Prince, or consti-  
 " tuted Orders in alliance and friendship with us, with  
 " full and absolute power to him the said Sir William  
 " Alexander, and his foresaids, (and to no others,) their  
 " stewards, servants, and others in their name, of esta-  
 " blishing colonies, and engaging in commerce, in the  
 " before named places or bounds, or any part of them  
 " particularly designed, and of expelling or debarring all

“ others from the same : also of leasing out proportions  
 “ of the lands thereof, to whatsoever person or persons  
 “ shall seem to him fit, and on the same terms, con-  
 “ ditions, restrictions, and observances, within all the  
 “ before named bounds, as he can do in Nova Scotia, by  
 “ whatsoever Charters or Patents granted to him by our  
 “ late dearest father, or by ourselves.”

These most extensive grants were ratified and confirmed in the Parliament of Scotland, held at the castle of Edinburgh; 28th June, 1633, the first of Charles I. there, the King himself being present.

As the limits of these grants might be said to admit of doubt in some particulars, it must be allowed that conflicting claims were set up by the French to some parts of them. It appears to be wholly unnecessary to pursue the history of the disputes between the two countries prior to the treaty of Utrecht, as the limits were then more clearly defined.

The 16th preliminary article thereof, to which M. de Torcy agreed on the 28th of May, 1709, is as follows :—  
 Article 16. “ The most Christian King shall yield to the  
 “ crown of Great Britain whatsoever France is possessed  
 “ of in the island of Newfoundland, and whatever coun-  
 “ tries, islands, fortresses and colonies which have been  
 “ taken and possessed on both sides since the beginning  
 “ of this war, in what part soever of the Indies that they  
 “ may be situated, shall be restored on the part of the  
 “ Queen of Great Britain and his most Christian Ma-  
 “ jesty.”

At a more advanced period of the negotiation, we have the following article :—“ The island of St. Christopher,  
 “ Hudson’s Bay, and Strait of that name shall be yielded  
 “ up entire to Great Britain, and Acadia, with Port Royal  
 “ and the fort shall be restored entire to her Majesty.”

In the speech from the throne, after announcing the te-

nor of the treaty, her Majesty Queen Anne thus expresses herself on the subject : " Our interest is so deeply concerned in the trade of North America, that I have used my utmost endeavours to adjust that article in the most beneficial manner. France consents to restore to us the whole bay and straights of Hudson, to deliver up the island of Newfoundland, with Placentia, and to make an absolute cession of Annapolis, with the rest of Nova Scotia or Acadia."

Such are the territories given by the Charters, and which were all duly possessed by the first Earl. It became requisite for the present Earl to make out his title under the original Charter granting the property, and this his Lordship effected according to the proper forms of law in Scotland, Nova Scotia being united to and made a part of Scotland by the Charter. It is termed the service of an heir, and proceeds upon a brief, which has the special name of a Brief of Inquest. It issues from the chancery in Scotland, directed to a judge there, which must be proclaimed and published at the headborough of the jurisdiction within which the heir is to be served. After the expiration of fifteen days, the service may proceed before the judge.

The jury to try the heirship consists of fifteen persons, sworn to act faithfully. The inquest thus set, the apparent heir then produces his claim, and the jury may proceed, not merely on the evidence, but on the proper knowledge of any two of themselves, being considered both in the light of judges and witnesses.

If it appear to the inquest that the claim is proved, they declare it by a sentence or service signed by the chancellor of the jury, and attested by the judge. The clerk to the service then prepares a retour (return) of the original claim, &c. with the verdict to the chancery, which, after being recorded, is called the retour. This

service being a sentence, must be restricted to the claim offered to the inquest.

Lord Stirling has been returned in due form of law.

1st. As heir to his deceased mother, Hannah, Countess of Stirling, as heiress to her brother Benjamin, eighth Earl of Stirling de jure, who was the last heir male of the body of William, first Earl of Stirling. This was on the 7th of February, 1826.

2ndly. As nearest and lawful heir in general of his great-great-great-grandfather, William, first Earl of Stirling, on the 11th October, 1830.

3rdly. As nearest and lawful heir of Tailzie and provision to the said first Earl, 30th of May, 1831, and

4thly. As nearest and lawful heir in special to the first Earl, on the 2nd of July following.

And his Lordship was on the 8th, in virtue thereof, and by precept from his Majesty directed forth of his said chancery in Scotland to the Sheriff of Edinburgh, infest in the whole country of Nova Scotia, the Lordship of Canada, with all their parts and pertinents, the office of his Majesty's hereditary lieutenant of Nova Scotia, Canada (new Brunswick and the adjacent islands included) &c. in tenure of the original grants, and is therefore under such infestment in the legal occupation and possession of all the high offices and of all the lands not disposed (granted) by his ancestors. The American property being made by the Charters part of the county of Edinburgh for the purpose of seisin, this is directed to be taken, and was taken pursuant thereto, at the castle of Edinburgh, the most conspicuous place therein.

These services and returns are not traversible (that is not to be questioned) but are taken as true, and can only be reduced (overturned) at the suit of a better claimant.

We shall conclude this chapter with a very few observations naturally arising from what has been stated. By

law Lord Stirling has recovered the patrimony of his ancestors. By law he is in actual possession of his estate, and by law no other person, be he who he may, has any title to interpose between him and his just rights. We are informed, notwithstanding, that the local authorities in Nova Scotia and Canada are instructed to prevent his real enjoyment of his property.

Let us view this matter a little more closely, and see to what it amounts. The reader will not hesitate to admit that the judges in Scotland are actually acquainted with the laws they administer ; that the verdicts already recorded of the juries there have been in accordance with the same laws, and that execution or seisin had pursuant thereto, was also agreeable to and not contrary to the same laws. Will any man, lawyer or otherwise, hesitate for an instant to make these very reasonable admissions ? If so, then the inferences, the obvious and necessary conclusions to be drawn from them are clearly that the judgments are only to be questioned, or controverted, or overturned by appealing to the same laws, before the same tribunals, upon the like principles, and no other whatever. Has this been done, or even attempted to be done by any one ? No. Can it be done ? By whom ? How, and when ? Yes, but only by a party who can shew a better title than Lord Stirling, and thereby reduce his. Until this be done, and Lord Stirling is perfectly assured and ascertained in the fact that it cannot, then every interruption given to his Lordship's recovered and recorded right and possession, no matter by whom, must be a direct infringement on the law of Scotland, as well as a gross act of injustice to Lord Stirling. The reader cannot doubt that the great purposes of all governments are to protect rights, not destroy them ; to support, not violate the laws ; to act by and not against them. Who ever yet doubted, or disputed, or denied

these truths? And yet in this country, of all others, singular, yet true it is, that we have a war of extermination actually waged against an individual who presumes to ask and require, and demand, as he has a right to do, the protection of the laws, and to shield himself from oppression under that sanction hitherto held to be impregnable? If in the plenitude of official power, a deliberate violation of the laws of an ancient kingdom can take place, to the utter ruin and destruction of Lord Stirling, how stands the case with any other individual? He who reads these pages, and truly considers their bearing and import, will see that where the laws are trampled down for one object of oppression, what is to stay their abuse in another? Lord Stirling's case of to-day may be his on the morrow. Who can tell on what security he rests? Who can be assured of safety under any title? Where is shelter to be found, when no law, save animal force and violence only exist?

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### CHAPTER III.

#### *Of the Powers given by the Charter respecting Honors, Titles and Offices.*

The same method will be pursued in this chapter as in that respecting territories, by extracting from the Charter of 1625 the portion of it embracing the subject, with such comments thereon as may appear to be requisite.

After giving various other powers, the Charter goes on :  
 “ And that men of honorable birth may be incited to the  
 “ undertaking of that expedition, and the settling of



“ planters on the said lands, we, for us and our heirs and  
 “ successors, &c. give and grant free and full power to  
 “ the aforesaid Sir William Alexander and his foresaids,  
 “ of conferring favors, privileges, offices and honors on  
 “ the deserving, with plenary power of disposing and  
 “ even giving to them or any of them, &c. &c. Also of  
 “ creating inventions of all sorts, arts, faculties or  
 “ sciences, or practising the same in whole or in part for  
 “ their good, &c. Also of giving, granting and bestow-  
 “ ing such offices, titles, rights, and powers, constituting  
 “ and appointing such captains, officers, baillies, rulers,  
 “ clerks, and all other regality, barony, and borough  
 “ officers and other functionaries for the administration  
 “ of justice, &c. &c. as shall seem to him necessary,  
 “ according to the qualities, conditions, and merits of the  
 “ persons who shall happen to reside in any colony of the  
 “ said provinces, or any part thereof, or who adventure  
 “ their means or fortunes for the advantage and improve-  
 “ ment thereof, &c. &c.” And in reference to what is  
 stated, the Charter declares: “ That the said Sir Wil-  
 “ liam Alexander and his foresaids shall have one com-  
 “ mon seal belonging to the office of lieutenant justiciary  
 “ and admiralty (vested in him and his foresaids) which  
 “ shall be kept by the said Sir William Alexander and  
 “ his foresaids, or their deputies, in all time coming, on  
 “ one side of which shall be engraved our arms, with  
 “ these words in the circle and border thereof: ‘ Sigil-  
 “ lum Regis Scotie Anglie Francie et Hybernies,’ and  
 “ on the reverse side our likeness, and that of our suc-  
 “ cessor, with these words: ‘ Pro Nove Scotie Locum-  
 “ tenente,’ a just model of which shall remain in the  
 “ hands and custody of the said conservator, which he  
 “ can use in his office as occasion shall require.”

And again, giving power “ in like manner of erecting,  
 “ founding and constructing common schools, colleges



“ and universities, &c. as also of creating prelates, arch-  
 “ bishops, bishops, rectors, and vicars of parishes, &c.  
 “ and likewise of founding, erecting and instituting a  
 “ senate of justice, places and colleges of justice, sena-  
 “ tors of council and session, members thereof for the  
 “ administration of justice, &c. Further, of erecting and  
 “ appointing secret and privy councils and sessions, &c.  
 “ and giving and granting titles, honors and dignities to  
 “ the members thereof, and creating their clerks and  
 “ members, and appointing seals and registers with their  
 “ keepers, and also of erecting and instituting officers of  
 “ state, as Chancellor, Treasurer, Comptroller, Collector,  
 “ Secretary, Advocate or Attorney General, clerk or clerks,  
 “ register and keepers of the rolls, justice, clerk, director  
 “ or directors of chancery, conservator or conservators of  
 “ privileges of the said country, advocates, procurators and  
 “ pleaders of causes, and solicitors, and agents thereof,  
 “ and other members necessary. Further, we have made,  
 “ &c. the said Sir William Alexander, and his heirs and  
 “ assignees, our and our heirs and successors Lieutenants  
 “ General, to represent our royal person, as well by sea  
 “ as land, of all and whole the said country and lordship  
 “ of Nova Scotia, as well during the space in which he  
 “ shall remain there, as on his or their voyage to the said  
 “ country or from it, and for ever after their return,  
 “ without interval of time or place, excluding all others  
 “ from the usurpation thereof, or from a claim to any  
 “ rights, benefits, authority and interest within the said  
 “ bounds and lordship of Nova Scotia, or to any judica-  
 “ ture or jurisdiction heretofore, in virtue of any fore-  
 “ going or subsequent right or title whatsoever.”

The Charter also grants power to make laws, build  
 cities, and appoint rulers and commanders, and consti-  
 tutes “ the said Sir William Alexander, and his heirs and  
 “ assignees heritably our Justice General in all criminal

“ causes within the said country and lordship of Nova  
 “ Scotia, High Admiral, and Lord of Regality and Admi-  
 “ ralty within the said country, hereditary high steward,  
 “ also thereof, &c. in like manner, and as freely as any  
 “ other Justice or Justices General, High Stewards, Ad-  
 “ mirals, Sheriffs or Lords of Regalities, had or can have  
 “ or possess and enjoy the said jurisdictions, judicatures,  
 “ offices, dignities, and prerogatives in any of our king-  
 “ doms, bounds, and dominions whatsoever,” &c. Again,  
 “ further, we for us, &c. give, grant, ratify, and confirm  
 “ unto the said Sir William Alexander and his heirs and  
 “ assignees, all places, privileges, prerogatives, preemi-  
 “ nences and precedences whatsoever, given, granted,  
 “ and reserved, or to be given, granted and reserved to  
 “ the said Sir William Alexander and his heirs and  
 “ assignees and successors, lieutenants of the said coun-  
 “ try and lordship of Nova Scotia, on behalf of the  
 “ knights, baronets, and remanant portioners and asso-  
 “ ciates of the said plantations, so as the said Sir Wil-  
 “ liam Alexander, and his heirs male descending of his  
 “ body, as lieutenant aforesaid, shall and may take place,  
 “ prerogative, preeminence and precedence, as well  
 “ before all esquires, lairds and gentlemen of our said  
 “ kingdom of Scotland, as before all the foresaid knights,  
 “ baronets of our said kingdom, and all others,  
 “ before whom the said knights, baronets, in virtue of  
 “ the privileges of dignity to them, can have place and  
 “ precedency for the advancement of which plantation  
 “ and colony of Nova Scotia, and in respect of it, espe-  
 “ cially the said knights, baronets were, with advice  
 “ aforesaid, created in our said kingdom of Scotland,  
 “ with their state and dignity, as a special token of our  
 “ favour conferred upon such gentlemen and honourably  
 “ born persons, portioners of the aforesaid plantation  
 “ and colony, with this express provision always, that

“ the number of the foresaid baronets never exceed one  
 “ hundred and fifty.”

Thus far the Charter, under which, and the former one of King James, Nova Scotia Baronets were created, and grants of land made to them to sustain the title. But though the inducement for their creation was obviously to benefit the then infant colony, it was not stated what quantity of land should support the qualification. This omission was supplied, however, seven days after the date of the Charter of King Charles, by the letter of his Majesty to the Privy Council of Scotland, dated 19th July, 1625. It is to be “ thrie myles in breadth and six in  
 “ lenth, of landes within New Scotland, for their several  
 “ proportions ;” and “ to the end that those who are to be  
 “ Baronetes, and to help thereunto, may not be hinderit  
 “ by coming unto us for procuring their grantes of the  
 “ saide landes and dignities, but may have them there  
 “ with less trouble to themselves and unto us, we haif  
 “ sent a Commissione unto you for accepting surrenderis  
 “ of landes, and for conferring the dignitie of Baronet  
 “ upon such as shall be found of quality fitt for the same,  
 “ till the number appointed within this said Commission  
 “ be perfected,” &c.

Sir William Alexander, after this, viz. on the 30th November, 1629, conferred the title of Baronet on a party, under the Great Seal of New Scotland. After reciting the Charters and the worth and service of the party “ in advancing and facilitating of their plantations,  
 “ therefore wit ye, me the said Sir William Alexander,  
 “ to have conferred titles, as I the said Sir William  
 “ Alexander as his Majesty’s Lieutenant and Deputy  
 “ aforesaid, and having power and authority as said is,  
 “ (in so farre as my said power and authority doth and  
 “ may extend, and no farther,) do by these presents  
 “ confer in and upon the said ——— and heyres male of

" his body, from tyme to tyme, in all tyme coming,  
 " the hereditary state, degree, order, name, dignity, and  
 " title of Baronet of New Scotland, with all and sundry  
 " prerogatives, privileges," &c. &c.

This grant is signed, sealed and delivered at Whitehall.

The foregoing particula are given as evidence of the actual exercise of the powers of the first grantee, Sir William Alexander, afterwards created Earl of Stirling, as that has been disputed, and probably on the ground that the grants of such title, though emanating, in the first instance, from Lord Stirling, were many of them afterwards held of the crown, by Charter of Novodamus, to the respective parties. Now this may well be, for the Charter to the Earl, before quoted, contains a clause empowering him and his heirs, &c. to make grants and infestments, &c. by " whatever styles, titles and designations, shall seem to them fit, or be in the will and option of the said Sir William Alexander and his foresaids, which infestments and dispositions shall be approved and confirmed by us and our successors, freely, without any compensation to be paid therefor."

The professed object in giving this extensive privilege to the first Earl of Stirling and his family, was to induce men of character and honour to settle in and improve the new colony. But there was a limit to the creations, which were in no case to exceed 150. The original creations were short of this number, and of them not more than 50 are now existing, a great number having become extinct. The right to the title in any one of the Baronets has never been questioned, nor indeed can be, without questioning the validity of the Charters which gave the power to create them. The power that would now destroy the Charters must, if consistent and well-founded, destroy the Baronetcies also. They appear to

be inseparable, of equal validity, and equally unassailable on any principle hitherto recognised.

How comes it then, that the Colonial Office deny the Charters, and admit the grants made under them? Destroy the foundation, and say the superstructure may stand. Can any other office effect so much?

These powers, ample and singular as they may seem, are not, however, without parallel, for the same monarch granted to Edward Somerset, second Marquis of Worcester, 1st April, 1644, as follows: "and for persons of  
"generosity, for whom titles of honour are most desirable, we have entrusted you with several patents under  
"our great seal of England, from a Marquis to a Baronet,  
"which we give you full power and authority to date  
"and dispose of, without knowing our further pleasure,  
"so great is our trust and confidence in you, as that  
"whatsoever you do, contract for, or promise, we will  
"make good the same accordingly, from the date of this  
"our Commission, forwards, which for the better satisfaction, we give you leave to give them or any of them  
"copies thereof, attested under your hand and seal of  
"arms," &c.—Lodge's Patents, 4th Ed. No. 45.

It may be proper to call the readers's attention to the first Chapter, as it regards the title of Lord Stirling to be Earl of Stirling; as if his power, under the Charter, in any respect depended on that title. It is quite clear, that those powers being given to Sir William Alexander, can in no respect be coupled with, or dependent on, a title of honour in Scotland, subsequently confirmed.

## CHAPTER IV.

*On the Protecting Clauses of the Charters.*

**T**HE first Earl of Stirling having actually spent more money on the territories granted to him, extensive as we have seen, than they were then worth, is secured in the perpetuity of his title to them, by every means that could well be devised.

The main inducements for the grants were, in addition to that of peopling the country, "in consideration of the faithful and grateful service rendered and to be rendered to us by our well-beloved councillor, Sir William Alexander, Knight, who, at his own expenses, the first of those of our country, undertook the conducting of this foreign colony, &c." And again, in another Charter, "in consideration of his great charges and expenses in his various undertakings, in the providing of ships, engines of war, ordnance, and munition, in the conducting of colonies, as also in exploring, settling, and taking possession of the said country, &c." Then "because the timely entry of any heirs, &c. on account of the long distance from Scotland, we have dispensed with the said non-entry whenever it shall happen." And again, "by our present Charter, will, declare, decree, and ordain, that one seisin, now to be taken at our Castle of Edinburgh, &c. with the teinds and teind sheaves thereof included, respectively is, and shall be, sufficient seisin for all and whole the foresaid lands, country, and lordship of Nova Scotia, &c. notwithstanding the said lands, &c. are far distant, and lie discontiguous from our said kingdom of Scotland; as to which we,

“ with advice and consent aforesaid, have dispensed, and  
 “ by our present Charter, for ever dispense.”

Again, “ which lands and privileges, jurisdiction, &c.  
 “ specially and generally abovementioned, together with  
 “ all right, title, &c. which we, or our predecessors or  
 “ successors, have, had, or any way can have claim, or  
 “ pretend thereto, &c. or to the mails, farms, profits, and  
 “ duties thereof, of whatsoever years or terms bygone,  
 “ for whatsoever cause or occasion we, with advice fore-  
 “ said, &c. of new, give, grant, and dispense to the fore-  
 “ said Sir William Alexander, and his heirs and assignees,  
 “ heritably for ever; *renouncing and exonerating the*  
 “ *same simpliciter with all action and instance heretofore,*  
 “ *competent to, and in favour of the said Sir William*  
 “ *Alexander and his heirs and assignees, as well for*  
 “ *non-payment of the duties contained in their original*  
 “ *infestments, as for non-performance of due homage,*  
 “ *conform thereto, or for non-fulfilment of any point of*  
 “ *the said original infestment, or for commission of any*  
 “ *fault or deed of omission or commission, prejudicial*  
 “ *thereto; and whereby the said original infestment may*  
 “ *in any way be lawfully impugned or called in question,*  
 “ *for ever acquitting and remitting the same simpliciter*  
 “ *with all title, action, instance, and interest, heretofore*  
 “ *competent, or that may be competent to us, and our*  
 “ *heirs and successors, renouncing the same simpliciter*  
 “ *jure lite et causa cum pacto de non petendo, and with*  
 “ *supplement of all defects, as well not named as named,*  
 “ *which we will to be held, as expressed in this our pre-*  
 “ *sent Charter. To be holden in free blench farm, as*  
 “ *said is, and dispensing with non-entry, whensoever it*  
 “ *shall happen in manner foresaid.*”

The territories granted to the Stirling family are thus so guardedly and firmly fixed in it, whilst a branch thereof remains : they are so extensive, and becoming now



of such increased value, public and private interests come apparently in such direct contact and hostility, that both, it is said, cannot stand.—Apparently this is so, but in reality it is not.

In the hands of the Stirling family, or of the Crown, as private property, the lands are to be dealt with in precisely a similar manner. They are to be lotted out and located as opportunity serves by either party, but for the same end. The purpose of the Charters is equally the purpose of Government and of Lord Stirling. The only difference is in the emolument thence arising in the first instance. Under the Charters Lord Stirling sells and takes the purchase money. By setting them at nought the Government does so instead of him. The emolument to an individual must be very considerable; the emolument to a Government comparatively of little value. Lord Stirling's noble and enterprising ancestor having in effect bought and paid for the estate, however extensive, assured to him and his heirs, as we have seen, the family is now only in the situation, if not impeded, of deriving any substantial advantage from it. Will any man say it is not a dreadful evil to destroy this estate, to deprive the owner of it of his just rights, to deny him even a hearing, and to deal with his property as if he were an utter stranger? No pretence of public service can fairly be set up here, for no service can be rendered to the public by the invasion of private rights. The public service consists in the equal protection of all rights, not in the destruction of any. A more dangerous or more destructive doctrine cannot be broached, than that any Government of any country, under any law, divine or human, can with impunity invade private property. Without compensation this would be tyranny in its most frightful form.

Let us, however, look calmly at the true situation of



the parties here, their separate interests, and the proper mode of adjusting them.

In locating the lands it has been said that both are equally interested. In the effects arising from colonization their interests naturally separate, or rather the Government alone reaps the constant and ever increasing benefit, in the constant and ever increasing trade with the Colonies. The locations ended, Lord Stirling's interest, as far as they extend, is ended also. That he has sold the allotments, and all resulting benefits, in an increasing and prosperous country, are benefits solely and wholly of a public nature, in which he can individually and exclusively no longer participate. Thus it would appear to be only in the very first operation that he and the Government could really come into collision. In every thing that follows, the latter only must benefit. This is natural, inevitable, just, and reasonable. If this be fairly put, what a monstrous responsibility is incurred by the Colonial Office in overpowering the rights of Lord Stirling in the sale of his lands, and stripping him of his all, for to them so inferior an object. The emolument to them in the sales, and grants, and locations, must be really insignificant; and yet this whole estate of an individual is so dealt with to promote the public service forsooth, when it is manifest that his Lordship's sales, grants, and locations would, as to all other results, equally and as effectually promote the interest of the country at large.

It has been alleged that the Charters tend to what in law is termed a perpetuity, which it abhors, and that consequently any opening is seized to prevent or destroy this perpetuity, as inimical to the general good. This is a serious misapprehension, as applied to the Charters. The law does abhor a perpetuity, certainly; it is admitted. The law seizes every opening to destroy a per-

petuity : this also is admitted. Now then what is a perpetuity—that is, the perpetuity which the law abhors ? To be brief—a perpetuity then is, where a man possessed of an absolute dominion over real property wishes by deed, or otherwise, to retain it in his family for ever ; to limit and fix the estate for ever, so that no inheritor by any means whatever shall at any time be able to break the chain ; that father and son shall enjoy the estate for life only, and the property remain inalienable by any future heir but for life. The law of England limits entail ; that is, in other words, the intention of such a person as before described, to parties named by him in the will or deed, and the first tenant in tail of any of those who could inherit, born after the tail created. In other words, the entail could be broken on the coming of age of the first person so born after its creation. *Because the law abhors a perpetuity.* Let us see how this applies to Lord Stirling's Charters ; bearing in mind that they are Scottish instruments, subject consequently to Scottish Laws and Tribunals. There is nothing in those Charters to prevent alienation of the estates, nothing to restrict the sale of lands, nothing approaching to perpetuity in the just and only legal sense of the word. On the contrary, every clause in them nearly is empowering and enabling the grantees to sell or locate the province. They are as entirely the reverse of perpetuity as words can make them. Their plain meaning and construction are all the other way.

One may easily imagine how this notion may have arisen, and that on the face of the Charters themselves, for they so guard and protect the interests of the Stirling family, that as between them and the grantor none of the usual causes of forfeiture can apply. But though this Noble Family could not *forfeit* their grants, they could at any time *sell their lands*. The reader will attend to

this distinction:—Every man who sells a fee-simple estate conveys to the purchaser a perpetuity; that is, he gives to him and his heirs *for ever* the property sold. The purchaser, however, may the day after his purchase alienate to another in like manner to him and his heirs *for ever*.

Kings James and Charles thus granted to the first Earl of Stirling, and to his heirs and assignees *for ever*, the territories in question. But Lord Stirling, in every grant he might make, or which the present Earl may make, does the same thing, and so may his Lordship's grantee. This cannot well be mistaken, and it disposes of any such objection as is before stated.

Fully aware, however, that Lord Stirling has to contend for his rights with the Government of the country—fully aware that various acts of the Legislature have passed in reference to the territories granted to his ancestor, the first Earl of Stirling, and consequently to him as the *retoured* heir thereto—fully aware also that on this ground, apparently so secure and unassailable, an opinion prevails that it wholly disposes of them, and places his Lordship at once out of Court, we are yet prepared to show, on principles not hitherto questioned, that his Lordship is not thereby deprived of his just rights, nor can be, without reversing both the rules of equity and of law applicable to such circumstances.

In proceeding to prove the position thus taken, let us first make admissions that ought not to be disputed. This is not an argument for victory, merely, but for justice. The facts must be known, stated, and admitted; nothing is lost by so proceeding. In the absence then of claimants of the Stirling family, after the Treaty of Utrecht, up to a very recent period, it is admitted that the Government acted properly in dealing with the territories in question as Crown lands. The extinction of

this Noble family, with all the portions unsold and unlocated, necessarily and legally threw the title back upon the original grantor. It was then, consequently, no aggression to deal with the lands as public property; for no one known to be a claimant could be said to suffer an injury, his claim being withheld, or for any reason whatever not made at the time of the passing of such Acts. It was not unfair to presume the family to be extinct under such circumstances, and the extinction of the family extinguished the claim under the Charters to all the portions of the territories not theretofore sold or located by the family. By the Charters, as we have seen, nothing else could destroy the claims, or rights, more properly speaking, of the Stirling family. Before coming, however, to the deductions to be drawn from what has been admitted, it is fair to cast about and see under what circumstances this family waived for a time or did not, at the time of the passing any Act of the Legislature regarding the territories, interfere or give notice of their rights. The great head of the family having spent an ample fortune in the then vain attempt to establish a valuable Colony, and to be rendered valuable by no other means, the extreme magnitude of the undertaking might well deter other descendants from any personal exercise of their privileges, and more especially so as the troubles in England followed hard upon the grants; and the frequent hostilities between the French and English Governments afterwards rendered the task still more hopeless and unadvisable. If they, the descendants, would have sold under such circumstances, who could have been found to purchase? If they would have located any part of the province, who would have been found to unite with them? The first grantee failing with an ample fortune to apply to the subject, and which he lost, what encouragement remained for the descendants, reduced by

these very means, to enter the field with any reasonable prospect of success? Inducements then, more than sufficient, led them to remain quiescent; and, besides, it must be remembered that the property itself, though immense in extent, was valueless in effect without a resident population. It continued so till within little more than half a century back. An individual could have no chance then single-handed of dealing with it beneficially. A Government might with comparative ease both locate and support the Colony. The quiescence of the family was not, however, the extinction of the family, nor of the Charters; and it is contended that under them the rights remain with the heir, but to be now dealt with *sub modo*, and not as unreal or not existing. The Legislature acted properly, in the absence of all claims of the Stirling family, in dealing with the territories as public property. Every interest of every member of the community was best consulted in so doing; nay, we are free to admit that thus far Lord Stirling could not justly complain. The objects of the Charters, of the Legislature since, of every one in short who wishes well to the prosperity of his country, is to make the lands valuable, and this can be done by no other means. But it cannot for a moment be denied, without denying the Charters, that whilst a branch of the Stirling family were in *esse*, the estates given by these Charters were private property. Neither can it be denied for one instant, that in dealing with private property for the public good compensation must be made to the individual, whoever he may be, who actually owns the property. If this be not admitted, then we ask fearlessly, what title is valid—what right secure—what property inviolate? Admitting these principles to be sound, what injury is done to any one that cannot easily be compensated—what difficulty exists that cannot be encountered successfully, not by

quenching the fountain of justice, but by permitting the current to flow in its native purity and virtue. The admissions it has been thought right to make are founded in such plain and obvious principles that nothing, as was said, could be gained to Lord Stirling's cause by denial. The legitimate effects of the Acts of the Legislature cannot, however, with these admissions, be said to destroy private property without compensation. They form, on the contrary, the plainest and clearest ground for it; for that no party was wrong in the passing of the Acts, and that no injury was supposed to exist till a claimant under the Charters had established by law his right to the estates granted by them.

Following up this line of argument, let us confine our remarks to the Act of the 6th George IV. chap. 75, which was passed to enable the Crown to grant to a company, to be incorporated by charter, to be called "The Canada Company," certain lands in the province of Upper Canada, and to invest the said company with certain powers, &c. Without this Act, presuming the property to be vested in the crown, his Majesty could not alienate it. This is precisely the machinery used in Scotland in granting the original Charters to Sir William Alexander, the only difference being that in Scotland the Charters preceded the Act of Parliament confirming them; in England, as we see, the Charter emanates from it. In both cases the act of the legislature is deemed necessary to validate the grants.

Now were the territories so dealt with in both cases really belonging to the crown, there can be no doubt that in both the grants would be equally valid and unimpeachable. But if there be not an indisputable title in the crown at the time, the act of the legislature will not *ipso facto* confer it. The grounds of the objection are founded on the simple fact of the property being at the

time not *public* but *private* property. It is well known, and need not be enforced by argument, that an act of parliament dealing with private property, where all proper parties, and the interests of all proper parties are not before either house, or have not had due notice to attend, are not conclusively barred by such act. It operates in such case merely as a conveyance, and a conveyance made by incompetent parties, or by some of many parties, or, omitting any one whomsoever, binds those only, and is good only against those who are parties to and execute the deed. These are general rules, not likely to be disputed.

We have seen in the former part of this chapter that the territories in question were not only vested in the Stirling family, but could not, under the Charters, be divested or forfeited, excepting by act of the family itself, by sale or otherwise. The family failing, and becoming extinct, would no doubt place the property remaining unlocated again at the disposal of the crown, and it appears to have been on this sole ground, supported by the fact of no claim having been set up by any member of the family for so many years, that extinction of it was presumed and acted upon.

The act of parliament, then, to which the attention of the reader is now more particularly invited, dealt with the property as public at the time that it was belonging to a family not extinct, and the consequence, upon the grounds before stated, follows, that the title attempted to be conveyed by the act is defective, the interests or compensation for the interests of the most essential parties being omitted.

Having made such ample admissions in favour of what has been done, not under this only, but under all other acts that have been passed, new modelling, new settling, new governing the country, it is needless to recapitulate



them. But it is proper to show that so far from their being impediments in the way of arrangement and compensation, they are so many imperative reasons in favour of it. No regularly constituted government can be presumed to sanction by its overwhelming power the spoliation or destruction of private rights. No such government can resist the just claims of individuals whose private interests are sacrificed for the public good, or presumed public good. The government can claim no more under its own acts than an individual, who by law cannot acquire the estate of another without purchase or indemnity. The conveyance cannot be good for the government which would not stand for an individual. It must be dealt with on the same grounds, the same views, the same interests, relatively and particularly. Were this not so, what argument could be opposed to the appropriation of any estate in this country by an act of the legislature? But being so, how can the claim on the part of Lord Stirling for restitution or compensation be resisted? It may be exceedingly inconvenient; it may be, in many cases, not a little difficult to adjust the terms; it may trench very awkwardly on other interests sprung up from the source of the mischief. All this, however, has nothing to do with the principle. That cannot depend on the convenience or inconvenience involved in its recognition. It only again adds strength to the reasons for immediate adjustment, and demands mutual concession in carrying the arrangements into effect. If Lord Stirling were claiming his just rights, and himself throwing obstacles in the way of the proper mode of compensating for their destruction, it might afford a pretence, not just, however, for holding him at a distance. But, as he has all along made the most liberal offers to compromise, it is difficult indeed to assign a fair reason for



rejecting them. These are not times for the exercise of power merely, unsanctioned by justice.

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## CHAPTER V.

### *Commercial Powers.*

The powers given by the Charter of 1625 under this head are of a very extensive nature, and are extracted in the order wherein they are placed in the grant.

“ With full power, privilege and liberty to the said  
 “ Sir William Alexander and his foresaids, by themselves  
 “ or their substitutes, of navigating any seas under our  
 “ ensigus and flags, with as many ships, of as great bur-  
 “ then, and as well furnished with ammunition, men, and  
 “ provisions as they can prepare at any time, and as often  
 “ as shall seem to them expedient, and of transporting all  
 “ persons, of whatsoever quality and degree, being our  
 “ subjects, or who, to submit themselves to our govern-  
 “ ment, shall desire to undertake that voyage, with their  
 “ beasts of burthen, horses, cattle, sheep, goods, and  
 “ whole effects, ammunition, engines, great arms and  
 “ military instruments, as many as they desire, and other  
 “ commodities and articles necessary for the use of the  
 “ same planters, for mutual traffick with the native  
 “ inhabitants of those provinces or others who shall  
 “ engage in trade with those planters, and of carrying  
 “ from thence all commodities and merchandizes which  
 “ shall seem to them necessary into our kingdom of  
 “ Scotland, without the payment to us or the officers of  
 “ our customs or their deputies of any tax, custom or

"impost for the same, and discharging them of their  
 "offices in that part for the space of seven years imme-  
 "diately following the day of the date of these presents,  
 "which advantage alone we have granted, and by our  
 "present Charter grant and dispoise freely to the said  
 "Sir William and his foresaids for the space of thirteen  
 "years thereafter, according to the rate of five per  
 "centum after mentioned; and after those thirteen  
 "years have expired, it shall be lawful to us and our  
 "successors to levy and exact from all goods and mer-  
 "chandizes which shall be exported from this our  
 "kingdom of Scotland to the said province, or imported  
 "from that province to our said kingdom of Scotland,  
 "into any ports of this our kingdom, by the said Sir  
 "William and his foresaids, five pounds per cent. only,  
 "according to the ancient manner of mercantile trading,  
 "without any other impost, tax, custom, or duty, from  
 "them for ever; which sum of five pounds per cent.  
 "being so paid by the said Sir William and his foresaids,  
 "to our officers and others to this effect appointed, it  
 "shall thereafter be lawful to the said Sir William and  
 "his foresaids, to transport and carry away the said goods  
 "from this our kingdom of Scotland, into any other  
 "parts or foreign countries, without the payment to us  
 "or our heirs or successors, or any others, of any other  
 "custom, tax, or duty, provided, however, the said goods,  
 "within the space of thirteen months after their arrival  
 "in any part of this our kingdom, be again put on ship  
 "board; giving and granting absolute and full power to  
 "the said Sir William, and his foresaids, of taking,  
 "levying, and receiving, to his own, and his foresaids  
 "proper uses, from all our subjects, who shall desire to  
 "conduct colonies, follow trade, or sail to the said lands  
 "of Nova Scotia, or from them, for goods and merchan-  
 "dizes, five pounds per cent. over and above the said

“ sum due to us ; whether on account of the exportation  
 “ from this our kingdom of Scotland to the province of  
 “ Nova Scotia, or of the importation from the said pro-  
 “ vince to this our kingdom of Scotland foresaid ; and, in  
 “ like manner, from all goods and merchandizes which  
 “ shall be exported by our subjects, conductors of colo-  
 “ nies, traders, and navigators, from the said province of  
 “ Nova Scotia, to any of our dominions, or any other  
 “ places, or shall be imported from our kingdoms, and  
 “ other places into Nova Scotia foresaid, five pounds per  
 “ cent. over and above the said sum destined to us ; and  
 “ of levying, taking, and receiving, to the proper uses of  
 “ the said Sir William, and his foresaids, by such func-  
 “ tionaries, officers, or substitutes, or their deputies or  
 “ factors, whom they shall constitute and appoint for  
 “ this effect, from the goods and merchandizes of all  
 “ foreigners and others, under our obedience, which shall  
 “ be either exported from the province of Nova Scotia,  
 “ or imported into it, ten pounds per cent. over and  
 “ above the said sum destined to us.”

The Charter after thus proceeding so clearly for the  
 imposing and receiving the duties aforesaid, goes on to  
 empower the building of forts, towers, &c., in furtherance  
 of such protections, and to enable the said Sir William  
 and his foresaids to receive and collect the same. Com-  
 ment here appears to be wholly unnecessary, for no  
 comment can more clearly impress on the minds of the  
 reader, the powers given, and the due exercise and  
 restriction of them, than the clauses extracted.

Why is not Lord Stirling now in the uninterrupted  
 enjoyment of them ? They are his right, his property,  
 another portion, and a very valuable one, of his estate.

My

Goderich  
Roadship

interview

Thursday  
J. H.

The East

Colonial Office  
August 22<sup>d</sup> /32

My Lord

I am desired by Lord  
Goderich to request that your  
Lordship will oblige him with an  
interview at this Office tomorrow  
Thursday at three O'clock

I have the honour to be

My Lord

Y<sup>r</sup> Lordships most O<sup>b</sup>d<sup>t</sup> Serv<sup>t</sup>

The Earl of Stirling R. V. Balfour

*Handwritten text, partially visible on the right edge of the page.*  
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W. Off.

Aug. 24. 1833

I am directed by Lord Goderich  
to return the enclosed Enquiry  
Balfour <sup>now</sup> has been in  
and for some time - Lord  
Goderich has no Seal resembling  
one used, and I may further  
state that Lord Goderich either  
as Sec<sup>y</sup> of State, has not  
acknowledged the individual  
15/11/33

styling himself as Earl of  
Stirling by that title.

Have the honor Sir  
to be  
Y<sup>r</sup> most ob<sup>d</sup>. h<sup>o</sup>. Servant

himself as Earl of  
by that title.

Have the honor Sir  
to be  
Your most Obedt Servant

## CHAPTER VI.

*On the attempt to incarcerate Lord Stirling by means of Forgery, and the Details appertaining thereto.*

The following narrative and correspondence is scarcely credible, and yet true, and some of the letters have been lithographed to enable every man who reads this memoir to judge for himself.

On the 22nd day of August, 1832, a man, apparently a gentleman, drove up in a cab to Lord Stirling's house in Portland Place, requesting to see Lady Stirling, his lordship being from home. It was in the dusk, so that he could not be readily seen or recognised again. He said he came from the Colonial Office, and left a letter addressed to Lord Stirling, with a seal apparently that of Lord Goderich, viz. a G. with a viscount's coronet over it.

The letter is as follows :—

Colonial Office,  
August 22, 1832.

MY LORD,

I am desired by Lord Goderich to request that your lordship will oblige him with an interview at this office to-morrow (Thursday) at twelve o'clock.

I have the honor to be,

MY LORD,

Your Lordship's most obedient Servant,

(Signed) B. T. BALFOUR.

*The Earl of Stirling.*

Lord Stirling's solicitor, Mr. Burn, was on the same evening apprised of the circumstance, and agreed to meet his Lordship at the Colonial Office the next day at the appointed hour.

Before that time, however, Mr. Burn was there, and learnt with no small surprise that Lord Goderich would not be at the office on that day, and that Mr. Balfour, the pretended writer, was in Ireland. Suspicion being thus excited, he, Mr. Burn, lost no time in preventing the approach of his lordship, and returned to the office with the letter, not having had it before, and learnt, that it was not written by Mr. Balfour, which in truth was impossible, and was referred to a person not then in the office, but at his private house, for further satisfaction.

On applying to this person, he immediately pronounced the letter to be a forgery, and requested to have it for the purpose of inquiry into the cheat as affecting the office. The letter was not then left, the leave of Lord Stirling for doing so not having been obtained, but was sent by post in the course of the day, with such information as to the probable author and concocter of the plan as circumstances appeared to justify. These circumstances were, that a man of rank had obtained a judgment against Lord Stirling, in an action in which the plea of privilege had not been pleaded in a sufficient manner to insure it. This left his lordship liable to an execution in that action, and thus to have his person incarcerated. The forged letter seemed to be the plan to get hold of his lordship's person, and was defeated in the manner before narrated. The name and circumstances were then detailed in the letter enclosing the forgery.

Now at this point of the case, would not any man, and every man have concluded and expected, as a matter of course, an indispensable obligation indeed, that the investigation would have been carried on with something like

a chance of detecting the cheat—with a degree of earnestness that would have left no ordinary—no, nor extraordinary means untried to achieve the object ? Would not this be the natural expectation of Lord Stirling in confiding the letter to the party for his investigation ? Most assuredly so ! And now, reader, mark well the result of this doughty commission. Why, truly, on the 24th, the very day after, enquiry ends where it begins, and the letter only was returned with “ I am “ desired by Lord Goderich to return the enclosed “ forgery. Mr. Balfour is now, and has been in Ireland “ for some time. Lord Goderich has no seal resembling “ the one used, and I may further add that Lord God- “ rich, either privately, or as Secretary of State, has not “ ever acknowledged the individual styling himself as “ Earl of Stirling by that title.”

Is this the way, we ask, that any of the readers of this narrative would proceed to detect a forgery ? Is this the earnest endeavour to discover the perpetrator ? Is this, in short, genuine ? Mr. — on being applied for to return the envelope, so necessary in such an enquiry, and which had been retained, the reply was such as may now be anticipated:—“ I did not think the envelope, “ which you request me to return, was of consequence ; “ I fear it has been lost, or burnt. I hope it will not “ signify. As the forged letter could not have come “ from any one in this office, Lord Goderich had no “ means of detecting the author ; and consequently I re- “ turned the letter to you.” Had any means been tried ?

In another letter, of the 29th of August, the same person says—“ As I had no reason to suppose that the en- “ velope was of any consequence, and as I was quite un- “ aware of the existence of any such conspiracy as you “ allude to, the envelope was thrown aside, together with “ other papers of the same description ;” (what, envelopes

to forged letters!) "and I am not sure that it can now be found."—"I can, however, distinctly assert that the seal alluded to (a Viscount's coronet with a G. under it) was not Lord Goderich's, who has not, and never had, either individually or officially, any such seal, &c." (How on earth could he know all this?) "The seal could not be Lord Grey's, as it was not an Earl's coronet."

It may be proper to state here, that Mr. Burn had written to Earl Grey asking for a reply with the small seal affixed, to which letter none was ever given. "If the envelope can be found," adds the party alluded to in a postscript, "it shall be sent to you." Although it has never yet been found or sent, it is not a little curious, and worthy of the reader's attention, to remark how very minutely the seal of it had been noticed, although the party "had no reason to suppose that the envelope was of any consequence," and was thrown aside! &c.

Thus also my Lord Goderich, in reference to the seal, says—"The seal with which the letter had been sealed (a Viscount's coronet with the letter G. under it) was not mine, as I have not now, and never had at any time, any such seal." Again,—“The seal could not be Lord Grey's, as he is an Earl, and the seal had a Viscount's coronet.” In conclusion—"I am sorry that the envelope has been mislaid, but I cannot see in what way the loss of it can affect the means of tracing the writer of the letter."

In the reply to Lord Goderich, Mr. Burn, adverting to this part of the subject, says—"Now, as to the envelope and seal not being supposed to be of consequence in such a case, this must arise from a very slight degree of attention to the matter. In an investigation of this kind, every thing pertaining to the letter is of con-

"sequence. That Mr. — thought so in not returning  
 "the cover, I cannot doubt. The seal, for instance, is  
 "some one's, a Viscount's, with a G. under the coronet.  
 "This would apply to your Lordship, as was intended,  
 "to Viscount Granville, and to not many more parties.  
 "No difficulty would have existed, with the seal, to find  
 "out whose it was. Well, then, that fact ascertained,  
 "how could it be obtained, and by whom? But I should  
 "pay an ill compliment to your Lordship's understand-  
 "ing to go farther, as it must occur to the mind of every  
 "one, that a material link of the chain of enquiry is  
 "wanting. Withholding the seal, however, is evidence  
 "another way, were it needed to fix the writer, for his  
 "most earnest desire should have been to remove the  
 "burthen, were it practicable, from his own shoulders.  
 "Your Lordship will pardon my having said so much  
 "in reply to that part of your Lordship's letter.

"As to promoting the enquiry, I did naturally expect  
 "that something more would have been done than merely  
 "to return the forged letter, with the intimation that  
 "it was a forgery, told to me before, and that your Lord-  
 "ship did not know the writer. This again fixed, were  
 "it wanting, the writing of it on Mr. —. He might  
 "well desire to quash further investigation, *knowing*  
 "*where it might end, and the affected carelessness of*  
 "*throwing aside the cover of a letter, not addressed to*  
 "*him, recollect, but another, and sent to him for a very*  
 "*particular purpose, is quite of a piece with the rest of*  
 "his conduct."

The reply to this letter by his lordship states positively  
 that the party charged with having written the forgery  
 was "a gentleman of the strictest honor and integrity,  
 "quite incapable of being guilty of any thing so shame-  
 "ful as that which you have imputed to him, but  
 "nothing," adds his lordship in another part, "suggests



“ what possible motives any person could have in forging  
 “ that letter : still less what could have induced *any*  
 “ person connected *with me*, or *with my office* to take  
 “ part in so trumpery a fraud, so easily and necessarily  
 “ detected, from the moment that the individual to whom  
 “ the forged letter was addressed, or any person in his  
 “ behalf, should present himself at the office by virtue of  
 “ that invitation.” To be sure such a person would be  
 told that the letter was a fraud and a forgery. Does it fol-  
 low that the party committing the fraud and the forgery  
 could also be detected on the former so presenting himself?  
 Certainly not ; so that the contemplated mischief might  
 have been effected, and the culprit still undiscovered.

His Lordship adds in a postscript, “ As you have now  
 “ thought proper to charge a *particular individual*, you  
 “ will, doubtless, proceed to bring it to proof. In this I  
 “ shall be most happy to join, &c.” The reply to this  
 letter states, “ How a gentleman so circumstanced could  
 “ be induced by any means whatever to lend himself to  
 “ such a measure is totally out of my power to explain.  
 “ A forgery is clearly committed. It had for its object,  
 “ I believe, the incarceration of my client. It had nearly,  
 “ very nearly succeeded. But for my prompt attention,  
 “ it would have succeeded, and then what assignable  
 “ motive could actuate Mr. — in such a base attempt ?  
 “ I cannot tell, but I may yet discover one, no good one  
 “ certainly, but here is the main business of further in-  
 “ quiry. I believe the conspiracy is planned by others.  
 “ My first letter, enclosing the forgery to Mr. — gave  
 “ the means of making inquiries, and I did suppose that  
 “ all I am doing and intend doing would have been done  
 “ better for me at the Colonial Office. There, however,  
 “ I am baffled by the loss, at starting, of one material  
 “ link in the chain of inquiry and detection, and not only  
 “ thrown back upon my own thus diminished resources,

“but called upon somewhat prematurely to come to the  
 “proof, as against Mr. ———. Surely it is not necessary  
 “to say, in the progress of an important inquiry, when  
 “guilt unquestionably rests on some one or more parties,  
 “that premature disclosures may disconcert the whole.  
 “It is for him who pursues guilt to choose the time for fixing  
 “it with the most effect. I think, in any other case, this would  
 “appear manifest to your Lordship.” His Lordship answered,  
 “I retain my opinion —you retain yours. Of course, therefore,  
 “I have only to say, that if you will indicate to me, through what  
 “channels, or by what means the author of the forged letter  
 “can be detected and punished, I will do whatever may be in my  
 “power to assist, &c.”

This offer, so full and so fair, was replied to thus:—  
 “My first letter to Mr. ——— intimated the quarter  
 “whence an attempt to incarcerate Lord Stirling might emanate.  
 “In what way the machinery was to be connected with Mr. ———  
 “was a fair subject of inquiry, in two respects,—to acquit him  
 “of all blame, if innocent—to fix the proper parties instead of  
 “him, or by possibility get at others by whom he might have been  
 “induced to lend himself to such a purpose. Being sure that I  
 “have fixed him; your Lordship being equally sure that he is  
 “incapable of thus acting, co-operation of inquiry can scarcely  
 “be expected. A case may be ‘damned with faint praise,’ and  
 “this requires unremitting exertions. All I shall venture to ask  
 “of your Lordship therefore, would be the return of the envelope,  
 “if it be not actually destroyed, Mr. ——— saying he was not sure  
 “of it; a seal of Lord Granville, if a small seal, with a G. under  
 “a coronet, and not otherwise, can be had from any official  
 “communication, to which it may have been affixed; a few sheets  
 “of paper, of different makers, used in the Colonial Office, of the

“size of your Lordship’s letter, and a stick of sealing wax. With these materials, slender as they may seem, I may work out my way to a clearer course of proceeding. It cannot but be painful to your Lordship’s feelings to continue a correspondence of this description. It is exceedingly so to me ; not from doubt, but certainly of conviction of having made good a material part of my ground ; a pivot now on which all my future proceedings will turn.”

Mr. Maule, the Treasury Solicitor, now took up the matter by Lord Goderich’s instruction, having had all the preceding correspondence confided to him, and an interview being offered, it was accepted by Mr. Burn, without delay. This ended in nothing. Mr. Maule thinking there was not even a *prima facie* case made out, and asked, with a certain air of confidence, what motives could be assigned for the commission of the forgery, as if it were imperative to shew that, before admitting the charge at all. Thus the proffered assistance in the investigation, was in effect, to throw the whole burthen of the proof on the party injured, and complaining, without in any way whatever taking a single step in aid of the investigation. To leave nothing undone, however, nothing unexplained, as far as Lord Stirling’s limited means extended, Mr. Burn did even endeavour to trace the motives of the base attempt, as the following extracts from his letter to Mr. Maule, will shew.

“In the affair of the forgery, I am called upon to assign motives for it against an honourable man. It is impossible. In this instance, the guilty individual must have fallen from honour and propriety of conduct, ere he could condescend to do the act.” “But I can conjecture motives, coupled with circumstances that may, in a moment of over zeal on the one hand, and easy inducement on the other, have led to it.” “My

"unfortunate client, entitled by Charters, with which  
 "you must be familiar I presume, to an immense Scot-  
 "tish territory, has through me taken every means  
 "hitherto in his power, to secure and manifest his rights.  
 "I began by writing to Lord Goderich, about nine  
 "months ago, offering a basis for coming to an arrange-  
 "ment.

"Lord Howick distinctly replied, in a not very cour-  
 "teous letter, that the claims would be wholly resisted  
 "and denied. After some correction of apparent mis-  
 "apprehension, and a great anxiety on my part to pre-  
 "vent what has since occurred, I was, to use the common  
 "phrase, driven out of court. The claims being of a  
 "public nature, affecting great political interests, as well  
 "as private, the public has been addressed repeatedly in  
 "co-operation with other means for obtaining redress.  
 "A Petition to Parliament ordered to be printed, and on  
 "which in due time it is competent to move, had the  
 "effect of stopping the second reading of a Bill, whose  
 "object was in effect, to take so much of my client's  
 "estate from him for public purposes. The Bill in  
 "Chancery against Bridge and others, of which it appears  
 "that you have a copy, was another mode to fix my  
 "client's rights. Now these proceedings may have been  
 "unpalatable to the Colonial Office. With whatever  
 "contempt the claim and the claimant may have been  
 "viewed, yet his measures may have had influence  
 "enough to be annoying. Arrived at this point, delayed  
 "as we may suppose in favorite measures, the heads of  
 "the Colonial Office may have occasionally expressed  
 "displeasure at any interruption, however contemptible  
 "in their apprehension. It is an easy transition then to  
 "suppose that an over zealous dependant, with the talent  
 "for a little mischief, and waiting a favourable oppor-  
 "tunity to end Lord Stirling, his case, his cares, and his

" claims, might, when such opportunity occurred, do an  
 " act not likely to be discovered, which would apparently  
 " be acceptable to his principals. If in this also he  
 " served a friend, then these are motives, all bad it is  
 " true, but these are inducements to do once, only once,  
 " and in a few minutes, a thing that must ever corrode  
 " the feelings of a party not otherwise abandoned. Few  
 " men are less suspicious than myself, few more aristo-  
 " cratic, and therefore more reluctant to impute dis-  
 " honour, where honour only ought to guide the conduct  
 " of men honourably born and bred. How painful then  
 " to have my eyes opened to this revolting subject ! I  
 " must pursue the enquiry link by link, through all its  
 " tortuous ramifications, for this is a duty I owe to my  
 " client. Where and how it may end, it is not in my  
 " power to foresee. Grant, however, that complete suc-  
 " cess shall crown my exertions, the subject is of so  
 " unhappy a complexion, that it would yield no satis-  
 " faction to my own mind to inflict permanent injury on  
 " even a guilty man. This is a painful dilemma, from  
 " which I must have assistance, and cordial assistance  
 " too, to be relieved. In this letter, as you will readily  
 " perceive, my mind is laid open to you, in the confi-  
 " dence that I address an honourable and skilful man of  
 " business ; but I cannot expect your co-operation, setting  
 " out as you do from an opposite point of the compass  
 " from myself, for, supposing effectual progress to be  
 " made, every step must be painful to you that casts a  
 " stain upon a previously good character. I assure you,  
 " Sir, it is extremely irksome to me too, but what other  
 " course is left me ? My only object is justice to Lord  
 " Stirling, not destruction to an individual !"

We are now arrived at the close of a correspondence,  
 that has led to less, probably, than any of the readers  
 could have anticipated. On reviewing it, let us see

what single step is taken at the Colonial Office to prosecute the inquiry ! The request is made there, in the first instance, to have the letter for the purpose. The return of it the next day, merely reiterating what had been verbally stated the day before, that it was a forgery, was nothing, and that Lord Goderich did not know the writer, if possible, less. Why how was it to be known, but by inquiry in every possible quarter ! And how was that inquiry to be directed but by agents fitted for the purpose ? And who so likely to procure such assistance as an accredited officer of the Government ? This must strike every one who reads the preceding statement. But when an individual is expressly charged with the fact, what means are taken to rebut it ? He of all other mortals in existence is called upon to exert himself to discover the cheat, and he, be it ever borne in mind, is the party who in the outset, casts aside or destroys one of the most essential evidences to go on with ; that is, the seal and envelope. This is all done in pure innocence and carelessness, not thinking the seal of any consequence, &c. In proportion as the thing is pressed, in the like proportion is the effectual inquiry repressed, and not a particle of assistance rendered, where all the business of investigation should have been, as proposed at first, carried on. Let the reader attend to this very particular fact, that the seal, this thing of no importance, thrown aside as useless, is yet so minutely inspected and alluded to, that it was reiterated on all hands that it was a Viscount's seal, the coronet over the letter G. ; that it could not therefore be Earl Grey's, and yet no seal of any body's has been procured hitherto by any means, (no means probably having been used,) to ascertain whose it was. Now surely it was no difficult task to have procured the seals of Lords Viscount Granville, Gormanston, Gage, Galway, Gort, Guillamore, Garlies,

Glandine, Glenorchy, Grey de Wilton, Grimston and Guernsey, for to whom else besides Lord Goderich in the list of Viscounts could it actually belong? Let us take the matter in another point of view, and say there was no sort of inclination on the part of the office to pursue the subject, and what course is more natural than the one actually adopted? We, it is true, request the forged letter of you, in order professedly to detect the cheat, but we return it to you the very next day, shorn of its readiest means of so doing. We then cast on you the burthen of the proof, having thus lessened your power to succeed. We stir not a single step further, but doubt all your statements, inferences, charges. We, the professed pursuers of guilt, the discoverers of the forgery, render every step you take less easy and more embarrassing, and we must even have a history of motives that could lead so honourable a man to so dishonourable an act. Well, but step by step, all that could be given, has been given, even up to the latter point, and what single advance has the Office made, from the outset of the correspondence to its final resting place with Mr. Maule, who thinks that even a *prima facie* case has not been made out, but which a dozen persons are ready to swear to, and who still sticks at the threshold himself and makes no further advance. What other possible inference can the most liberal mind draw on the occasion, but the inevitable inference that an innocent man would stir heaven and earth to remove such a stain off his shoulders, whilst a guilty one would equally strive to quash, in every way he could, all further enquiry on so harassing a subject. This chapter has already swelled out to a greater length than was intended; and yet a great deal is untold that pertains to the subject.\* We shall not attempt to excite any one's feelings

\* A few sheets of paper were transmitted from the Colonial Office, none of them however being identical with that of the

on the narrative; that is quite needless. But conclude by asking in what form of words, by what yet unknown language, how it is in the power of any one, however indulgent, however kind, to persuade the reader to repress the one single burst of indignant contempt with which he views the culprit in this most abominable and nefarious attempt?

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## CHAPTER VII.

### *Of the Proceedings hitherto taken by Lord Stirling for the recovery of his Rights.*

**I**T may not be known generally that in consequence of certain proceedings in Parliament for the formation of Land Companies on the territory of his Lordship, a Petition was presented to the House of Commons in June last, and ordered to be printed. This Petition was presented with a view to stop such proceedings, which it has done effectually for the present. After stating the Charters, so often quoted and referred to, and his Lordship's title and return as heir thereunder in July, 1831, it goes on to say that the country of Nova Scotia had been overrun and occupied by the French, and restored to the British Government at the Treaty of Utrecht, on the sole ground of a prior title in the Crown to that of the French, and evidenced by the said Charters granted to the first Earl;

forged letter; on stating this, more were sent, still omitting the one sort actually wanted. A sheet has been procured that is of exactly the same maker, from another quarter, and it is what is called Government and Contract paper.



that upon the same ground and evidence the Petitioner alleged that, in fact and in law, any other occupation of any other party or parties, without the express sanction of his ancestors, was an usurpation on him and his existing rights; that his Lordship had actually commenced proceedings in the Court of Chancery against the Company, or lessees of the Company, called the Nova Scotia Mining Company, who had possessed themselves of certain portions of his territories; that, notwithstanding his Lordship's rights, a company of persons, styling themselves the New Brunswick and Nova Scotia Land Company, had applied to Parliament to enable his Majesty to grant them a charter of incorporation, and that such application was then pending, whereby, if permitted and sanctioned, the Petitioner would be grievously injured unless compensation were provided for him adequate to the portion of his property intended to be applied for the purposes of the New Company; that he had also heard that other applications of a similar nature were pending, or about to be made, to interfere with his said estates, without any colour of right or pretence whatever, but that the same were waste and unlocated, which necessarily led to his manifest wrong and injury, and praying the House to order all such unauthorised proceedings to be stayed until a full and fair enquiry into the truth and justice of his Lordship's statements and rights; and that he might be heard in support thereof, by Counsel or otherwise, at the bar of the House, or before a Committee to be named for the purpose, when all proper parties might be also directed to attend. This Petition was ordered to be printed, but will now have to be presented again in the new Parliament when it meets.

The bill in Chancery, alluded to in the Petition, states fully the several rights and powers of Lord Stirling to call upon the parties to account to him for the proceeds of

their mining or colliery operations on his territories, his Lordship has also petitioned the Crown for payment of a large sum of money, to the effect following, viz. That his late Majesty King Charles the First, by his Royal Letters Patent, in February, 1632, granted to Lord Viscount Stirling the sum of Ten Thousand Pounds, in satisfaction of losses sustained by the said Viscount in giving orders for the removing of his colony, then at Port Royal in New Scotland, at the King's express command, for "performing of an article of the Treaty betwixt the French and us."

That the said grant expressly stated, "it is in no wise for quitting the title, right, or possession of New Scotland, or of any part thereof, but only for the satisfaction of the losses aforesaid."

That the said sum of Ten Thousand Pounds had never been paid, but was still due, and claimed by Lord Stirling, as the heir and representative of the grantee, &c.

Lord Stirling, after setting forth his title to the money, more fully adds, that the evidence of the grant and non-payment was to be found in the archives and documents of the State, to which he referred. Amongst others, he referred to a Petition to his late Majesty, King Charles II. on behalf of a grand-daughter of the grantee, which Petition, by an order dated the 4th of December, 1660, was remitted by the King "to the Right Honourable the Lord Chamberlain of his Majesty's household, to report what he conceives fit to be done therein."

No further proceedings, however, appear to have been taken, nor any part of the money paid; and Lord Stirling claimed payment, as the Crown had had the benefit of the first Earl's removal of the colony, which was to be compensated in manner already stated.

Lord Stirling's claim, with principle and interest, amounted to 110,000*l*.

On sending the Petition, duly signed by his Lordship,

Lord Melbourne declined to present it, on the ground of its being signed and stated as the Petition of Lord Stirling, whose title was not recognised by the House of Peers.

After several letters having passed between Mr. Phillips, Lord Melbourne's Secretary, and Mr. Burn, who strenuously maintained the absolute necessity for Lord Stirling signing as a Peer, the Petition has been at length presented to the King, and referred to the Lords of his Majesty's Treasury for their Lordship's consideration. The line of argument taken on behalf of Lord Stirling is as follows:—That had the claims on the Crown depended on the title of Earl of Stirling, and not on that of legal representative of the first Earl, independently of such title of honour, it would not have been so pressed. The claim to the money, however, in no degree depended on the title of honour, but was equally existing in Mr. Alexander as in the Earl of Stirling. The grant of lands, in respect whereof the claim originated to the first Earl, was made before his elevation to the title of Earl. It was not, therefore, territorial here, though it was so to other property in Scotland, for which the Earl of Stirling was now proceeding at law there, *quasi* Earl, and therefore and thereby entitled. Lord Stirling having been enrolled on the Great Roll of Scotch Peers, and having voted repeatedly in the choice of Representative Peers for Scotland, did not then call himself a Peer, as a person might be said to do whose claims were to be substantiated before some legal tribunal, and before any decision had thereon. This had already been done in Lord Stirling's case, and, by the laws of Scotland, so efficiently, as to enable him to prosecute for property there, coupled with title, as has been said. On such recognition, it appeared to be rather hard to prevent his access to the Throne for a claim of restitution and justice not founded on such title, nor in any way con-

nected with it, and yet that it should suffice in another portion of the empire to support a suit for territory, coupled with such title, and only to be recovered by the person holding it. That a question, no doubt, existed in this case, as to the necessity of going to the House of Lords to obtain a recognition here, and this question depended in a great measure on the strict meaning and construction of the Articles of Union between England and Scotland. Thus Lord Stirling's title is dated anterior to the Articles, and, he contended, was preserved to him by the laws of Scotland, which were not affected by the Articles. To overturn the right of Lord Stirling to the title acquired by the laws of Scotland, he was advised, that more was requisite than the single regulation of one branch of the legislature only; that, in truth, nothing short of an Act of Parliament could alter the law of Scotland in this or any other particular.

His position then was this, with a claim to extensive property in Scotland, he was trying his rights there for that property, because it was dependent on, and coupled with his Peerage title there; that no one but an Earl of Stirling could recover and enjoy it. That petitioning the Crown here he was refused a hearing, because he signed as Earl of Stirling, and was not so recognised by the Peers of Parliament, though his claim here was in no degree depending on his title of honour. That a British subject wished to approach the throne on a matter, to him, of the most urgent importance. He wished for nothing more in his Petition than that attention to it which the justice of the case required: and was he to be refused a hearing because he signed by a title already recorded and allowed in another portion of the empire. And further, Lord Stirling, who addressed the Crown as such, had been pronounced by the King's Judges to be so, and awarded privilege accordingly. In Scot-

land, in sustaining instance on solemn argument before the Judges there. In England, before the late Lord Tenterden, who ordered common bail to be filed in an action brought against his Lordship as a commoner. Before Lord Chief Justice Tindal in like manner. By the late Lord Chancellor Lyndhurst, in taking the oath of qualification to vote by proxy at Holyrood House. These were all judicial recognitions pronounced, in effect, by the Crown; and it did seem to be unnecessarily rigorous to say that he could not now approach the throne which had thus virtually admitted his status. That Lord Stirling had no choice here, that is, he could not destroy, by his own suicidal act, the position sustained by the Scotch Judges that warranted his process in the courts in Scotland for territory, and extensive territory too, coupled, as is before said, with that title. That it did seem strange that the claims of justice were to be turned aside or withheld on grounds so technical, so conflicting, and yet on which no part of his case for compensation rested. That the recognition by the Judges in Scotland and England, was that of Privilege coupled with Peerage, *exercised in England as well as in Scotland*, but no doubt as a Scotch Peer. Though none of the Scotch Peers as such were Peers of England, yet their privileges were all secured to them, and recognised here; by the Act of Union, however, they were Peers of Great Britain. The Duke of Roxburgh, for instance, in England, though not an English Peer, was still Duke of Roxburgh. That the House of Commons received a Petition, presented last session from Lord Stirling, which had been ordered to be printed. That was for restitution of territory in Nova Scotia. A prior Petition had been so presented, and received the session before. Nay, that his Lordship had already petitioned the King in Council, as Earl of Stirling, viz. on the 29th of August, 1831, on the

occasion of the Coronation, and on the next day had received a reply from the Council Office, under signature C. Greville, by direction of the Lords of the Committee of Council, and addressed to his Lordship as Earl of Stirling. The reply, moreover, in no way referred to the objection at present made.

Let us now indulge in a few, and but a few remarks, which involve, however, such a series of contradictions as certainly never before, since the world began, environed any other individual. Lord Stirling is in Scotland, as we have seen, pronounced by the mouth of the King's Judges Earl of Stirling, in the suit therein for territory coupled with his title, by sustaining instance, that is, adjudging on his title thus to sue. Lord Stirling in England is told by the noblemen of the Colonial Office, that he is only the gentleman styling himself Earl of Stirling, and therefore not entitled to other courtesy. In Scotland, on the Great Roll of Peers, his Lordship stands recorded and votes repeatedly for Representative Peers. In England the King's Home Secretary at first says, I cannot even present a Petition, although it has nothing to do with your title, because it is not signed as Mr. Alexander. But in England, Lord Lyndhurst, when Lord Chancellor, certifies in favour of Lord Stirling. Lord Grey has repeatedly so addressed his Lordship; nay, on the 29th of August, 1831, when Lord Stirling tendered his homage at the Coronation ceremony, as Hereditary Lieutenant and Lord Proprietor of the Province of Nova Scotia, &c. and signed the Tender as Earl of Stirling and Dovan, the Lords of the Committee of Council replied thereto the very next day, addressing his Lordship by his proper title, and acquainted him that his Majesty had already approved of a ceremonial on the occasion, and therefore granted a dispensation, under a *salvo jure*, for any future occasion. Again, the late Lord Tenterden, and Lord

Chief Justice Tindal, have each released Lord Stirling from arrest on the ground of his Peerage, and ordered common, instead of special bail, to be filed accordingly.

There is, however, one uniform course to be found in these revolting absurdities ; and that is, in every way to baffle and defeat Lord Stirling's claims of every description, and, till now by Lord Melbourne, to deny him access to any opening where speedy justice might, and probably would be done him.

Before closing this chapter, it may be well to recur to another curious document relative to this interesting subject, and recently found in the State Paper Office. It is a Petition to King Charles the Second, very soon after the Restoration, and is as follows, *literatim et verbatim* ;

“ TO THE KING'S MOST EXCELLENT MATIE.

“ The humble Petition of Thomas Elliott, Esq., one of  
“ the Grooms of your Majes. Bed Chamber,

“ Sheweth—That whereas a certain place in America called Nova Scotia was formerly given, by his Royall Matie. King James to one of the family of the Sterlings, in Scotland, who sould the same to the French, under whose comand it contynued untill Cromwell (about five years since) tooke it from them, and gave it to one Temple and Crowne for ever, who are now in the possession thereof, but the right of disposal in your Maty.

“ May it therefore please yor. Maty. to graunt the same to yor. Petr., either for terme of years or otherwise, as to your Maty. shall seeme meete.—And yor. Petr. shall pray, &c.”

This document appears to have been referred to the Commissioners of Foreign Plantations “ at the Court at *Whithall*, this 17th July, 1660.”

Now though nothing has been found further regarding Mr. Elliott's modest request, in reward of services probably as little known to the public then as at present, yet is not the document without its use. There is not a particle of evidence contained in it against Lord Stirling's claims. On the contrary, it strengthens them, by bringing them down nearly half a century later than the first Charter, without legal or actual impeachment. First this learned groom of the bedchamber says truly, that there was such a place in America as that called Nova Scotia, and given by his Majesty King James to one of the Stirling family. Both statements are perfectly true, and without much trouble he might then have ascertained to which of the Stirlings, and under what instruments or charters the gift was made. This, too, would have set him right as to the next allegation, that this member of the family "sould the same to the French." He could not sell to the French. The Charters gave no such power—quite the reverse. Observe the folly and ignorance of the groom in this respect. This is the clause enabling Lord Stirling to sell:—"It shall be lawful to the "aforesaid Sir William Alexander (the first Earl) and his "heirs and assigns, to give, grant and dispo<sup>n</sup>e any parts "or portions of the said lands, country and lordship of "Nova Scotia, &c. to and in favor of whatsoever persons "their heirs and assigns hereditably, &c. (*provided they "are our subjects*) to be holden of the said Sir William "Alexander, &c. &c." Very well, the sale to the French is disposod of, and was probably so disposed of at the time, as no particular steps appear to have been taken to put Mr. Elliott in possession of his sovereignty. Well then, he adds, it continued under their "comand" (that is, of the French) "untill Cromwell, about five years since, tooke it from them." Very true, the French took it, not by grant, but by force. Very true, Cromwell



took it from them, and gave it to one Temple and Crowne for ever. Also very true that Cromwell took the kingdom of Great Britain from King Charles himself, and gave it to his son Richard ; and with just as good a right and as fair a title, and with as modest a request might Elliott have petitioned for the one as the other. The reader will not expect, surely, that argument should be brought forward to question Cromwell's rights. Who can ever dream that he had any the moment the sword was out of his hand ? Even Elliott himself says truly, as to that, the right of disposal was in his Majesty.

But all this affords not a shadow of evidence against Lord Stirling ; it makes for him, and materially too, as irrefragable proofs that his rights—that is, the rights of his family—were, as to these matters, on as secure a basis as ever, and in no otherwise affected than by the difficulties thus thrown in the way of their due exercise and enjoyment. Up to the year 1660 then, we have them unimpeached and unimpeachable, and are fairly entitled to assume this in the absence of documentary evidence to the contrary in reply to Elliott's petition. The not granting his request is proof, under the circumstances, that it could not be granted. And why could it not be granted ? Because the Charters to Lord Stirling were a complete bar to any such disposition of Nova Scotia to another. What became of Cromwell's grantees, Temple and Crowne, does not appear from any collateral documentary evidence that has hitherto been traced ; but as the French again overran the country, it is probable that these men either abandoned the territory, or sunk in the struggle, as the first Earl had done, against overwhelming force. All this, however, has nothing to do with the Charters, but to bring them down so much later as efficient instruments

We shall now advance a step further on the same firm

ground from documentary evidence found in Scotland, and that is a charter of King William III., dated at Kensington, 27th June, 1698, and passed under the Great Seal of Scotland, confirming a grant of lands in Nova Scotia that flowed from the Charters to the first Earl, with the title and dignity of Baronet, which, with the lands as annexed thereto, &c. &c. were resigned for the granting of this confirmation to a new series of heirs. This is nearly a century from the first grant, and is a formal, official, and unquestionable recognition of the force and validity of the title originally granted.

It were a waste of words to use other arguments. Here the facts suffice. But how stood the country at the time? Why still in the hands of invaders and usurpers, not worth contending for by the state, and certainly still less so by the rightful owner, whose powers were wholly inadequate to the undertaking. Link by link then, in the chain of evidence, we have it strengthened at each remove. Every discovery leads to only a more impressive conclusion; every fact but more unequivocally proves the great fact of Lord Stirling's unshaken rights. Are we then still to be told they will be resisted and denied? Are the usurpation of the French and the grants of a Cromwell to be the only precedents for the Government now to follow? They were open enemies to each other, and to all order and law save that of force. Are we at this time to be told that such examples only are worthy of imitation, and such principles alone to be acted upon? If so, the subversion of one monarchy may be the sure guide to another; the destruction of one vested right the sole reason for that of a second!

## CHAPTER VIII.

*Conclusion.*

The Charters granted to Lord Stirling's enterprising ancestor, as we have seen, were confirmed in the Parliament of Scotland, in 1633.\* Every sanction, then, that could be given to the title in the first Earl was given, and it is to be shown by those who now resist and deny the right of his Lordship, the present Earl, on what grounds they do so. Bearing in mind that Nova Scotia, by the Charters giving title to the Stirling family, was also annexed to Scotland, and subject to the Scotch laws, it will be difficult to imagine on what just ground any other can be applied to the subject. Supposing the grants had given an island in the Orkneys or the Hebrides, no doubt could have remained in the mind of any one that the customs and laws of Scotland would have guaranteed the parties at all times claiming under such grants, and in supposing a different location, it is only to grapple with the substantial question, freed from the difficulty that may otherwise be thrown over the subject. The Charters having incorporated Nova Scotia with the Mother Country, it is, however remote in point of distance, integral in point of law, and must be treated accordingly as such in all that has been set forth in reference to it.

The territories granted were doubtless immense ; the value of them, however, at that early period inconsider-

\* Vide Appendix, not only for this Act, but for several other important extracts and papers, confirmatory of the facts and reasonings before stated in various parts of the preceding pages.

able, and that for two incontrovertible reasons. First, the lands had been recently and not then fully discovered or surveyed; were in possession of native tribes, against whom hostility was unavoidable to render the grants of any value at all, and wholly destitute of any sort of culture whatever: secondly, they were to be peopled from the Mother Country, or no one beneficial object to any one could be effected; to render them valuable they must be peopled and cultivated. The position of the grantees and the granter, then, was this: if you, Sir W. Alexander (the first Earl) being a man of fortune, skill, and enterprise, will undertake the settlement of this new and unknown country, every encouragement shall be given to you in so great an affair. You shall be invested with such powers, such privileges, such rights, that, as far as human foresight can extend, nothing in all times coming shall defeat or destroy them. Although an immense territory was thus, in fact, given to the first Earl, as has been said, the estate was comparatively valueless, and only to be rendered valuable by the enterprise and at the costs and charges of the first occupant. It is the fact, also, that to secure this, the charges of the first Earl were so excessive, that he spent a much more valuable estate at that time in Scotland to effect his dominion abroad.

All that has been stated regarding the grants, the inducements for them, and the cost attending them to the first grantee, appear in the Charters themselves, and need no other confirmation, as has been shewn in a preceding chapter, and here briefly recapitulated. "In consideration of the great charges and expenses in his (first Lord Stirling's) various undertakings in the providing of ships, engines of war, ordnance and munitions, in the conducting of colonies, as also in exploring, settling and taking possession of the said country," &c. So

much for consideration and value paid. Then, "because  
 "the timely entry of any heirs," &c. on account of the  
 long distance, &c. from Scotland, "we have dispensed  
 "with the said non-entry, whensoever it shall happen."  
 So much for non-entry. Again, as to forfeiture, "re-  
 "nouncing and exonerating the same simpliciter, with  
 "all action and instance heretofore competent to and in  
 "favour of the said (first Earl) his heirs and assignees,  
 "as well for non-payment of the duties contained in the  
 "original infeoffments, or for non-performance of due  
 "homage conform thereto, or for non-fulfilment of any  
 "point of the said original infeoffment, or *for commis-*  
*sion of any fault or deed of omission or commission*  
*prejudicial thereto,"* &c. Here we are, then, at the  
 foundation of these well founded and most extensive  
 rights—rights so secured and for such good reasons, the  
 first Earl being in effect the purchaser, that we may now  
 pause and ask, on what earthly ground or pretence the  
 party clothed with them now, Lord Stirling, is to be told  
 he will not even be heard by the Government, but that  
 his claims will be altogether *resisted and denied?*

It must be presumed that what has been before stated  
 was all known to the Colonial Office; that no point  
 hitherto urged was not duly considered there before the  
 prompt refusal to negotiate: that, in truth, many other  
 details with which we have for the present dispensed  
 were equally familiar to them, and that their judgment  
 was applied, consequently, to the whole of the case.  
 We must presume all this, for otherwise, we should fall  
 into the error of imputing ignorance to an essential  
 branch of his Majesty's Government, which to infer,  
 would be highly indecorous, if not almost criminal.

In the full view, then, of the matter, in all its relative  
 bearings, Lord Stirling is told, in answer to his liberal  
 offer to negotiate, that his Charters are all waste paper,

and his claims fit only to be *resisted or denied*. Now admit that his claims have no better security than his Charters, and the confirmation of them in the Parliament of Scotland; admit that his Lordship can only claim them under the laws and customs of Scotland; admit that he stands on no better ground than what those laws sanction, and which the Union has not affected. But as they are only chartered rights, in these times of Charter destruction, it may be very absurd to set up a claim on any such basis. Magna Charta, it is true, is but a Charter, and very old, if not obsolete; still there is such a thing: the Bill of Rights only another instrument of a like nature, though both have been confirmed in Parliament; nothing more, no, nor nothing less! Are we in England, the safe, the honest, the unflinching guardian of every right? Are we addressing Britons, who never yet gave way to oppression, to spoliation of private rights, to the destruction of vested privileges? Advocating the cause of justice, equity, reason, and not to be heard? And by whom? To serve what particular interest? To accomplish what particular end? We leave the reader to answer these questions, and feel confident, unhesitatingly confident, in the replies.

It has been rumoured, and for want of a more substantial adversary we must combat the rumour, that the territories comprised in the Charters have been conquered by France, and reconquered by this country, so that no claim can now exist in Lord Stirling, whose family lost the property during the French occupation.\* Now, admit this mighty affair to its utmost latitude, and that the country for a time actually belonged to France,

\* Vide Appendix for some curious documentary evidence on this subject, sent to the author since the Work went to the Press.

we merely ask whether this would necessarily destroy private title? In a conquered country, does all property change hands? Are all the inhabitants turned out of their possessions, and new ones among the conquerors let into them? In an extended and thinly peopled territory it might have been inexpedient, or it might have been out of the power of the Stirling family to use their property during the usurpation. The value of it then, too, was comparatively trifling, and the distance from home great. This, then, would be non-user whilst an enemy held the country. When it was re-conquered, however, and returned to the original Government, surely so monstrous a proposition never can be assumed as that the property, private property, vested in the Government. Why, this would be worse than the enemy! Private rights, then, are not in civilized countries otherwise affected by conquest or reconquest than by the imposts to which they may be subjected on either hand. But, and here, reader, mark well what is said, for it is of the utmost importance, the proofs on the part of Britain, in dealing with and reclaiming the territories alluded to at the treaty of Utrecht, are *these identical Charters under which Lord Stirling's claims also are firmly founded!* These Charters? Yes, these very Charters are the proofs in the hands of Government that the country was originally Scottish; that it pertained to the Crown of Scotland, and must be restored to its original sovereignty. So far this was very right and proper. The claim so founded and proved was fully admitted and allowed; and now we must go one step further, one single step, and give the same evidence precisely in all its parts in favour of Lord Stirling, for that his interests in this fair view of the matter are identical with those of the Government. Can we stop short of this? Is there any intermediate link in the chain that, if broken, would not

break up the whole? Can the Charters by any possibility or parity of reasoning be good for the one purpose and fail for the other? Impossible. Here, then, we are in a curious dilemma, and without any chance of relief, unless we return to the very plainest and most obvious dictates of common sense, and admit, as every honest man will admit, that you cannot recover under these Charters for the Government, and deny the rights of Lord Stirling.

A Government founded in justice and equity is at all times secure and powerful; a contrary one ever mutable, ever wavering, fit only to be swept away from the face of the earth. Are we actually come to that pass that Charters are to be destroyed because they have become, by lapse of time, insignificant? Are we to destroy them here also, for that by lapse of time they have become comparatively of infinitely more effect.

Oh, but man, proud man,  
Deck'd in a little brief authority,  
Plays such fantastic tricks before high Heaven,  
As make the angels weep.—SHAKESPEARE.





## APPENDIX.

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*The following Documents having been nearly all furnished since the foregoing pages were sent to the Press, they are here given as confirmatory of some of the positions taken as to Lord Stirling's Rights and Privileges, and as generally tending to confirm what has been previously stated and argued.*

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### THE WARRANT

*Conferring the Privilege of creating Baronets.*

CHARLES R.

Right trustie and right welbeloued cousin and counsellour, right trustie and welbeloued cousins and counsellouris, and right trustie and welbeloued counsellouris, wee greete you well.

Whereas upon good consideration, and for the better advancement of the plantatioun of New Scotland, which may much import the good of our service, and the honour and benefite of that our auncient kingdome, our royall father did intend, and wee have since erected, the order and title of Barronet in our said auncient kingdome, which wee have since established, and conferred the same upon diverse gentlemen of good qualitie : and seeing our trustie and welbeloued counsellour, Sir William Alexander, [Knight, our principall secretarie of that our auncient kingdome of Scotland, and our Lieutenant of New Scot-

land, who these many years bypast hath been at greate charges for the discoverie thereof, hath now in end settled a colonie there, where his sone, Sir William is now resident ; and wee being most willing to afford all possible meanes of encouragement that convenientlie wee can to the Barronets of that our auncient kingdome for the furtherance of so good a worke, and to the effect they may be honoured and have place in all respects according to their patents from ws, wee have been pleased to authorize and allow, as by the presents, for ws and our succes-souris wee authorize and allow the said Lieutenant and Barro-nets, and euerie one of them, and their heires-male, to weare and carie about their neckis, in all time cuming, ane orange tannie silke ribban, whereon shall heing pendant in a scutcheon argent a saltoire azur thereon, ane inscutcheon of the armes of Scot-land, with ane imperiall crowne above the scutcheon, and encercled with this motto, " Fax mentis honestæ gloria," which cognois-sance our said present Lieutenant shall delyver now to them from ws, that they may be the better knowen and distinguished from other persounis. And that none pretend ignorance of the respet due unto them, our pleasure therefore is, that by open Proclamatioun at the marcat croces of Edinburgh, and all other head brughs of our kingdome, and such other places as you shall thinke necessar, you cause intimate our royall pleasure and in-tentioun herein to all our subjects, and if any persoun out of neglect or contempt shall presume to tak place or precedence of the said Barronets, their wyffes or children, which is due unto them by their patents, or to weare their cognoissance, we will that, upon notice thereof given to you, you cause punishe such offenderis, by fying or imprisoning them, as you shall thinke fitting, that otheris may be terrified from attempting the like : and wee ordaine, that from time to time, as occasioun of grant-ing and renewing their patents, or their heires succceeding to the said dignity, shall offer, that the said power to them to carie the said ribban and cognoissance shalbe therein particularlie granted and insert, and wee likewise ordaine these presents to be insert and registrat in the books of our counsell and Exchequer, and that you cause registrat the same in the books of the Lyon King

at Armes and Heraulds, there to remain *ad futuram rei memoriam*, and that all parties having interesse may have authentik copies and extracts thereof, and for your so doing, these our letters shalbe unto you and euerie one of you, from time to time, your sufficient warrant and discharge in that behalffe. Given at our Court of *Whythall*, the 17. of November, 1629.

To our right trustie and right welbeloued cousin and counsellour, to our right welbeloued cousins and counsellouris, to our right trustie and welbeloued counsellouris, and trustie and welbeloued counsellouris, the Viscount or Dupleine, our Chancellour of Scotland, the Earle of Monteith, the President, and to the remanent Earls, Lords, and otheris of our Privie Counsell of our said kingdome.

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### COUNCIL.

*Letter of King Charles I. to the Lords of Council and Exchequer.*

RIGHT, &c.—There being at this time some controversie between us and the French, concerning the title of lands in America, and particularly New Scotland, it being alledged that Port Royal, where the Scottish colonie is planted, should be restored as taken, since the making of the peace, by reason of the articles made concerning the same, as we are bound in dutie and justice to discharge what we owe to everie neighbour prince, so we must have a care that none of our subjects do suffer in that which they have undertaken, upon just grounds, to do us service, neither will we determine in a matter of so great moment till we understand the true estate thereof. Therefore, our pleasure is, that you take this business into your consideration. And because we desire to be certified how far we and our subjects are interested therein, and what arguments are fit to be used when any question shall occur concerning the

same, or the defence thereof, that after due information, we may be furnished with reasons how we are bound to maintain the patents that our late dear father and we have given. So, expecting that having informed yourselves sufficientlie of this business, you will return us an answer with diligence, &c. Whitehall, 3rd. July, 1630.—Earl of Stirling's Register of Letters of King Charles I., &c. MS.

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*Letter of His Majesty to the Convention of Estates.*

CHARLES R.

Right trustie and right well beloved cousin and counsellor, right trustie and well beloved cousins and counsellors, right trustie and well beloved counsellors, right trustie and trustie and well beloved, we greet you well. Having given forth ane decree upon these things, whilk were submitted unto us in such sort as, after due information (having heard all parties) we conceived to be best for the public good, and having given order for making interruption, that we might no way be prejudged by the Act of Prescription, which we can never think was at first intended for anie prejudice of the Crown, we made choice rather to obviate any inconvenient that may come thereby by public acts in council, than to trouble a number of our lieges by particular citations. Therefore we have thought fit to recommend the same unto you, that they may be informed by you our estates convened by us at this time, and likeways where our late dear father and we have erected the dignitie of Baronets for advancing the plantation of New Scotland, granting lands therewith for that effect. We recommend likeways the same, in so far as shall be lawfullie demanded, to be informed by you. And so, not doubting but that you will be careful both of these and all other things that may import the honour of that kingdom or the good of our service, we bid you farewell. From our Court at Nonsuch, the 14th of July, 1630.—Reg. Sec. Conc. 1630, fol. 16.

*Acts of the Convention of Estates.*

Apud Holyrood House, ultimo die mensis Julii, 1630.

The estates presentlie convened all in one voice ratifies, allows, approves and confirms the dignitie and order of Knight Baronets, erected by his Majestie and his late dear father of blessed memorie, and conferred by them upon sundrie gentlemen of good qualitie for their better encouragement, and retribution of their undertakings in the plantation of New Scotland, with all the acts of secret council, and Proclamations following thereupon, made for maintaining of the said dignitie, place and precedence due thereto, to continue and stand in force in all time coming, and that intimation be made hereof to all his Majestie's lieges by open Proclamation, at the Mercat Cross of Edinburgh, and other places needful.

The estates presentlie convened, having duly considered the benefit arising to this kingdom by the accession of New Scotland, and the successful plantation already made there by the gentlemen, undertakers of the same, in regard whereof, and that the said lands and territories of New Scotland are by the patent thereof, made in favour of Sir William Alexander of Menstrie, Knight, his Majestie's secretarie, annexed to the Crown, therefore the said estates all in one voice has concluded and agreed that his Majestie shall be petitioned to maintain his right of New Scotland, and to protect his subjects undertakers of the said plantation in the peaceable possession of the same, as being a purpose highlie concerning his Majestie's honour, and the good and credit of this his ancient kingdom.—Acts of Parliament, vol. 5, pp. 223, 4.

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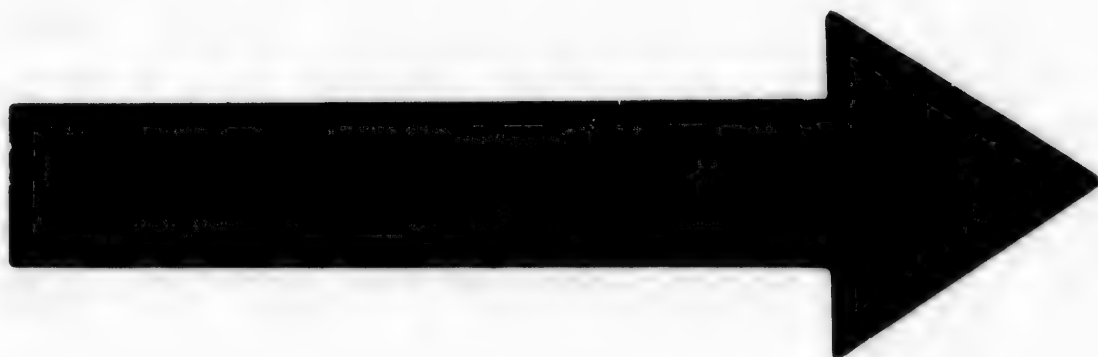


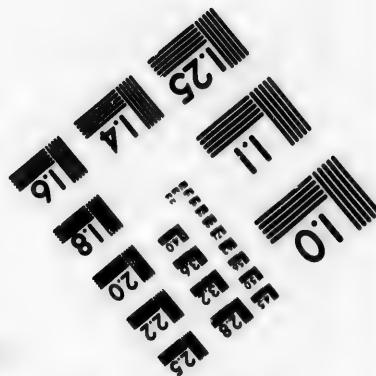
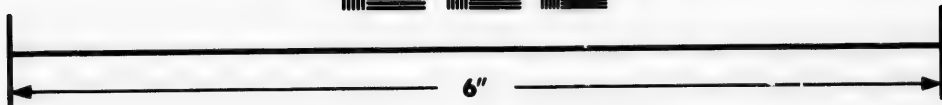
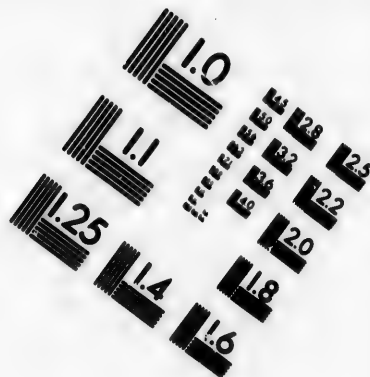
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WARRANT.

*Letter of his Majesty to the Viscount of Stirling.*

Right, &c. Whereas there is a final agreement made betwixt us and our good brother the French King, and that





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amongst other particularities for perfecting thereof, we have condescended that Port Royal shall be put in the state it was before the beginning of the late war, that no partie may have any advantage there during the continuance of the same, and without derogation to arise, preceding right or title, by virtue of any thing done, either then, or to be done, by the doing of that which we command at this time. It is our will and pleasure, and we command you hereby, that with all possible diligence you give order to Sir George Home, Knight, or any other having charge from you there, to demolish the fort which was builded by your son there, and to remove all the people, goods, ordnance, munitions, cattle and other things belonging unto that colonie, leaving the bounds altogether waste and unpeopled, as it was at the time when your son landed first, to plant there by virtue of our commission. And this you fail not to do, as you will be answerable unto us. Greenwich, 10th July, 1631.—  
Earl of Stirling's Register.

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#### COUNCIL.

*Letter of his Majesty to the Lords of Council and Exchequer.*

Right, &c. Seeing we have seen, by a letter from you, the order of baronets, erected by our late dear father and us, for furthering the plantation of New Scotland, was approved by the whole estates of our kingdom at the last convention, and that we understand, both by the reports that came from thence and by the sensible consideration and notice taken thereof by our neighbour countries, how well that work is begun, our right trustie and well beloved counsellor, Sir William Alexander, our Lientenant there, having fullie performed what was expected from him for the benefit which was intended for him by the creation of these Baronets. Being very desirous that he should not suffer therein, but that both he and others may be encouraged to prosecute the good beginning that is made, as we heartilie think all such as have contribute their aid by contracting with him

for advancing of the said work alreadie, our pleasure is that you seriously consider, either amongst you all, or by a committee of such as are best affectioned towards that work, how it may be best brought to perfection, for we are so far (whatsoever controversie be about it) from quitting our title to New Scotland and Canada, that we will be verie careful to maintain all our good subjects who do plant themselves there, and let none of the Baronets any way be prejudged in the honour and privileges contained in their patents, by punishing of all that dare presume to wrong them therein, that others may be encouraged to take the like course, as the more acceptable unto us, and the nearer to a title of nobilitie, whereunto that of Baronet is the next degree. And if the said Sir William, as our Lieutenant of New Scotland, shall convene the Baronets to consult together concerning that plantation, we hereby authorise him, and will you to authorise him, as far as is requisite for that effect, willing that Proclamation be made of what we have signified, or of what you shall determine for furthering that work whereof we recommend the care to you, as a matter importing speciallie our honour, and the good of that our ancient kingdom. Greenwich, 12th July, 1631.—Earl of Stirling's Register.

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#### MINUTE OF COUNCIL.

Apud Holyrood House, 28th July, 1631. *Sederant.*

Chancellor	V. Stirlie	B. Iles	Clerk Register
St. Androis	L. Gordon	L. Melvill	Advocat
Privie Seal	Areskine	L. Carnegie	Sir Johne Scot
Wintoun	B. Dunkeld	L. Naper	Sir Robert Ker
Linlithgow	B. Ros	Traquair	Sir Robert Douglas
Perth	B. Dunblane	Forrester	Sir James Baillie

The Lords of Secret Council, for the better forderance and advancement of the plantation of New Scotland, gives and

grants commission by thir presents to Thomas, Earl of Hadintoun, Lord Privie Seal, George, Earl of Wintoun, Alexander, Earl of Linlithgow, Robert, Lord Melvill, John, Lord Traquair, Archibald, Lord Naper, David, Bishop of Ros, Sir Archibald Acheson, Secretar, Sir John Hamilton of Magdalens, Clerk of Register, Sir Thomas Hope of Craighall, Knight Baronet Advocate, Sir George Elphinstoun, Justice Clerk, Sir John Scot of Scotistartvet, and Sir James Baillie, or anie five of them, without excluding of anie others of the council, who shall be present to convene and meet with William, Viscount of Stirling, and the Knights Baronets, at such times and places as the said Viscount of Stirling shall appoint, and to confer with them upon the best means for the fordering of the said plantation, and to make and set down overtures thereanent, and to present and exhibit them to the said lords, to the intent they may allow or rectifie the same, as they shail think expedient.—Reg. Sec. conc. 1631, fol. 80.

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### EXCHEQUER.

#### *Letter of his Majesty to the Lords of Council and Exchequer.*

Right trustie, &c. Whereas we send herewith enclosed unto you a signature of ten thousand pounds sterling, in favour of our right trustie the Lord Viscount of Stirling, to be past and expedie by you, under our great seal. Lest any mistaking should ensue thereupon, we have thought it good to declare unto you that (as it may appear by itself) it is no ways for quitting the title, right, or possession of New Scotland, or of any part thereof, but only for satisfaction of the losses that the said Viscount hath, by giving order for removing of his colonie at our express command, for performing of ane article of the Treatie betwixt the French and us. And we are so far from abandoning of that business, as we do hereby require you and everie one of you to afford your best help and encouragement for furthering of the same, chieflie in persuading such to be Baronets as are in qualitie fit

for that dignitie, and come before you to seek for favour from us, but remitting the manner to your own judgment, and expecting your best endeavours therein. Willing thir presents be insert in your books of Exchequer, and an act made hereupon, we bid, &c. Whitehall, 19th February, 1632.

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*Treaty of St. Germain, 29th March, 1632.*

Traité, &c. Art. 3. De la part de sa Majesté de la Grande Bretagne, ledit sieur ambassadeur, en vertu du pouvoir qu'il a lequel sera inseré a la fin de ces presentes a promis et promet pour et au nom de sadite Majesté de rendre et restituer tous les lieux occupées en la Nouvelle France, la Cadie et Canada, par les sujets de sa Majesté de la Grande Bretagne, iceux faire retirer desdits lieux. Et pour cet effet ledit sieur ambassadeur delivrera lors de la passation et signature des presentes aux Commissaires du Roi très Chretien en bonne forme, le pouvoir qu'il a de sa Majesté de la Grande Bretagne, pour la restitution desdits lieux ensemble, les commandemens de sa dite Majesté a tous ceux qui commandent dans le Port Roial, Fort de Guebec, et Cap Breton, pour estre lesdites places et fort rendus et remis es mains de ceux qu'il plaira a sa Majesté tres Chretienne ordonner, &c,—*Fœdera* (continuation by Sanderson) vol. 19.

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ADVOCAT.

*Letter of his Majesty to the Lord Advocat.*

Trustie, &c.—Whereas upon the late treatie betwixt us and the French King, we were pleased to condescend that the colonie which was latelie planted at Port Royal in New Scotland should be for the present removed from thence, and have accordingly given order to our right trustie, the Viscount of Stir-

ling, our principal Secretarie for Scotland. Although by all our several orders and erections concerning that business, we have ever expressed that we have no intention to quit our right, title, to any of these bounds ; yet, in regard our meaning perchance will not be sufficientlie understood by those our loving subjects who hereafter shall intend the advancement of that work, for their satisfaction therein we do hereby require you to draw up a sufficient warrant for our hand, to pass under our Great Seal to our said right trustie the Viscount of Stirling to go on in the said work whensoever he shall think fitting, whereby, for the encouragement of such as shall interest themselves with him, and he may have full assurance from us, in verbo principis, that as we have never meant to relinquish our title to any part of that country which he hath by patents from us, so we shall ever hereafter be readie, by our gracious favour, to protect him, and all such as have, or shall hereafter at any time concur with him, for the advancement of the plantation in these bounds foresaid. And if at any time, by order from us, they shall be forced to remove from the said bounds, or any part thereof, where they shall happen to be planted, we shall fullie satisfie them for all loss they shall sustain by any such letters or orders from us. And for your so doing, &c.—Greenwich, 14 Junii, 1632.—Earl of Stirling's Register.

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## BARONETS.

### *Letter of his Majesty to the Baronets.*

Trustie, &c. Whereas our late dear father, out of his pious zeal for advancement of religion in the remote parts of his dominions, where it had not been formerlie known, and out of his royal care for the honour and weal of that our ancient kingdom, was pleased to annex to the Crown thereof the dominion of New Scotland, in America, that the use might arise to the benefit of that kingdom : We being desirous that the wished effects might

follow by the continuance of so noble a design, were pleased to confer particular marks of our favour upon such as should voluntarily contribute to the furtherance of a plantation to be established in these bounds, as appeared by our erecting of that order of Baronets, who with you are dignified: whereunto we have ever since been willing to add what further we conceived to be necessarie for the testifying our respect to those that are already interested, and for encouraging of them who shall hereafter interest themselves in the advancement of a work which we so really consider for the glorie of God, the honour of that nation, and the benefit that is likeliest to flow from the right prosecution of it. But in regard that, notwithstanding the care and diligence of our right trustie the Viscount of Stirling, whom we have from the beginning entrusted with the prosecution of this work, and of the great charges already bestowed upon it, hath not taken the root which was expected; partly, as we conceive, by reason of the incommodities ordinarily incident to all new and remote beginnings, and partly, as we are informed, by want of the timely concurrence of a sufficient number to assist in it; but especially the colonie being forced of late to remove for a time, by means of a treatie we have had with the French. Therefore have taken into our royal consideration by what means again may this work be established; and conceiving that there are none of our subjects whom it concerns so much in credit to be affectioned to the progress of it, as those of your number for justifying the grounds of our princely favour which you have received, by a most honourable and generous way, we have thought fit to direct the bearer hereof, Sir William Alexander, Knight, unto you, who hath been an actor in the former proceedings, and hath seen the country and known the commodities thereof, who will communicate unto you such propositions as may best serve for making the right use hereafter of a plantation and trade in these bounds, for encouraging such as shall adventure therein. And we doubt not, but if you find the grounds reasonable and fair, you will give your concurrence for the further prosecution of them. And as we have already given order to our Advocat for drawing such warrants

to pass under our Seals there, whereby our loving subjects may be freed from all misconstruction of our proceedings with the French anent New Scotland, and secured of our protection in time coming in their undertakings into it, so we shall be readie to contribute what we shall hereafter find we may justlie do for the advancement of the work, and the encouragement of all that shall join with them to that purpose. Which recommending unto your care, we bid you farewell.—Beaulie, 15th August, 1632.—Earl Stirling's Register.

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COMMISSIONERS FOR THE PLANTATION OF NEW  
SCOTLAND.

*Letter of his Majesty to the Lords of Council and Exchequer.*

Trustie, &c. Whereas our late dear father, for the honour of that his Ancient Kingdom did grant the first patent of New Scotland to the Viscount of Stirling, and was willing to confer the title of Knight-baronet on such of his well-deserving subjects as should contribute to the advancement of the work of the plantation in the said country, we were pleased to give order for the effectuating of the same, according to our Commission direct to you for that purpose. And understanding perfectlie (as we doubt not is well known unto you all) that the said Viscount did begin and prosecute a plantation in those parts with a far greater charge than could be supplied by the means foresaid. And the rather in regard of the late discouragement of some by our commanding him to remove his colonie from Port Royal, for fulfilling of ane article of the treatie betwixt our brother the French King and us, to make everie thing betwixt us be in the estate wherein it was before the war; hearing that there was a rumour given out by some that we had totallie lost our purpose to plant in that country, as having surrendered our right thereof; lest any further mistaking should arise thereupon, we thought good hereby to clear our intention thereon, which is,



that our said Viscount, with all such as shall adventure with him, shall prosecute the said work and be encouraged by all lawful helps thereunto, as well by completing of the intended number of Knight-baronets as otherways. And being informed that some of our subjects of good qualitie in this our Kingdom and Ireland, who have taken land in New Scotland holden from us, did accept of the said dignitie, and were obliged to contribute as much towards the said plantation as any other in that kind, were put to far greater charges at the passing of their rights than the natives of that Kingdom were at in the like cases. It is our pleasure, that whensoever any of our subjects of qualitie fit for that dignitie within this our Kingdom or Ireland, having taken lands holden of us in New Scotland, and having agreed with our said Viscount for their part of a supply towards the said plantation, and that it is so signified by him unto you, that until the number of Baronets formerly considered upon be complete, you accept of them, and give order that their patents be passed in as easy a rate as if they were natural subjects of that our Kingdom. And that you make known to such persons, and in such manner as you in your judgment shall think fit. In doing whereof, &c.—Whitehall, 24th April, 1633.—Earl of Stirling's Register.

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## NOVA SCOTIA.

1st CHARLES the FIRST in Scotland.

*Ratification in favour of the Viscount of Sterling, of the Infeftments and Signature, granted to him, of Dominions of New Scotland and Canada, in America, and Privileges therein contained, and of the Dignity and Order of Knight Baronets; and Act of Convention of Estates made thereanent.*

Our Sovereign Lord and Estates of this present Parliament, ratifie and approve all Letters, Patents, and Infeftments granted by King James the Sixth, of blessed memory, or by our said

Sovereign Lord, to William Viscount of Sterling, and to his heires and assigneis of the Territories and Dominions of New Scotland and Canada in America, and especially the Patent Charter and Infestment granted by His Majestie's umwhile dearest Father of worthie memory, of New Scotland, of the tenth day of September, the year of God 1621. Item, another Charter of the same, granted by His Majestie, under the Great Seale, of the date of the twelfth day of July, 1625 yeares. Item, another Charter and Infestment, granted by His Majestie of the Country and Dominion of New Scotland, under the Great Seale, of the date the third day of May, 1627 yeares. Item, another Charter and Infestment, granted by His Majesty, under the Great Seale, of the River and Gulph of Canada, bounds and privileges thereof, mentioned in the said Patent, of the date the second day of February, 1628 yeares. Item, a Signature passed under His Majesty's hand, of the said Country and Dominion, which is to be with all diligence exped through the Seale, of the date, at Whitehall, the twentie fourth day of April, 1633 yeares; with all liberties, privileges, honours, jurisdictions, and dignities, respective therein mentioned. Together also, with all execution, precepts, instruments of seasings and seasings following, or that shall happen to follow thereupon. And also ratifies and approves the Act of General Convention of Estates at Holy-rude House, the sixth day of July in the Year of God, 1630, whereby the said Estates have ratified and proved the dignities and Order of Knight Barronet, with all the Acts of Secret Council, and proclamations following thereupon, made for the maintaining of the said dignittie, place, and precedencie thereof.

And His Majestie and Estates aforesaid will, statute, and ordaine, that the said Letters, Patents, and Infestment, and the said dignittie, title, and order of Barronets, and all Letters, Patents, and Infestment of Lands and dignities granted therewith to any person whatsoever, shall stand and continue in force, with all liberties, privileges, and precedencies thereof, according to the tenor of the same, and in als ample manner as if the bodies of the said Letters Patent, Infestments, and Signature

above-mentioned, were herein particularly ingroost and exprest, and ordaine intimation to be made thereof by open Proclamation to all His Majestie's Leges, at the Market Crosse of Edinburgh, and other places needful, that none pretend ignorance thereof.

*P. Acte No. 28, made in the Parliament held by King Charles the First (in person) at Edinburgh, the twentie eight day of June, Anno Domini One Thousand Six Hundred and thirtie three.*

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## ACT OF COUNCIL.

Apud Edinburgh, 15th February, 1634,

*Sederunt. Chancellor, Thesaurer, Privie Seal, Marishall, Roxburgh, Annandail, Lauderdaill, Southesk, L. Areskine, Clerk Register, Advocat,*

Forsameikle as his Majestie's late dear father of blessed memorie, for the honour of this his ancient kingdom of Scotland, did grant the first patent of New Scotland to his Majestie's right traist cousin and Counsellor William Erle of Sterline, and was willing to confer the title of Knight Baronet upon such of his well deserving subjects as should contribute to the advancement of the work of the plantation in the said countrie, his Majestie was pleased to give order for effectuating of the same, according to his Commission directed to the Lords of Privie Council for that purpose. And his Majestie, understanding perfectly that the said Erle did begin and prosecute a plantation in these parts, with a far greater charge than could be supplied by the means foresaid, and the rather in regard of the late discouragement of some, by his Majesties commanding the said Erle to remove his Colonie from Port Royal, for fulfilling of ane Article of the treatie betwixt his Majestie and his brother the

French king, to make everie thing betwixt them to be in the estate wherein it was before the war, hearing that there was a rumour given out by some, that his Majestie had totallie lost his purpose to plant in that countrie, as having surrendered his right thereof. And therefore, lest anie further mistaking should arise thereupon, his Majesty has thought good hereby to clear his intention therein, which is, that the said Erle, with all such as shall adventure with him, shall prosecute the said work and be encouraged by all lawful helps thereunto, as well by completing the intended number of Baronets as otherways. And whereas some of the subjects of the kingdom of England and Ireland, of good qualitie, who, having taken land in New Scotland holden of his Majestie, did accept of the said dignitie there, and were obliged to contribute as much toward the said plantation as anie others, in that kind were put to greater charges at the passing of their rights than the natives of this Kingdom were at in the like cases, therefore his Majestie has thought meet hereby to declare his royal will and pleasure, that whensoever anie of his Majestie's subjects of qualitie fit for that dignitie, within the kingdom of England or Ireland, having taken land holden of his Majesty in New Scotland, and having agreed with the said Erle for part of a supplie towards the said plantation, and that it is signified so by him to the said Lords of Privie Council, that till the number of Baronets formerlie condescended upon be complete, the said Lords shall accept of them, and give order that their patents be passed at as easie a rate as if they were natural born subjects of this kindgom. And the said Lords ordainis letters to be direct, charging officers of arms to pass and make publication hereof, by open proclamation at the Market Crosses of the head boroughs of this kingdom, and other places needful, wherethrough none pretend ignorance of the same.

*Minute of Council.*

The whilk day George Erle of Kinnouil, Lord Hay, &c. Chancellor, William Erle of Morton, Lord High Thesaurer, and

Thomas Erle of Hadintoun, Lord Privie Seal of this kingdom, William Erle Mareshall, Robert Erle of Roxburgh, John Erle of Annandaill, Sir John Hay, Clerk of his Majesty's Registers, and Sir Thomas Hope of Craighall, his Majesty's Advocat, accepted upon them the Commission granted unto them under his Majesty's Great Seal, dated at Theobald's, 14 Septembris, 1633, for passing of infeftments of New Scotland.—Reg. Sec. Conc. 1634, fol. 261.

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*Copy of the Patent by which William, First Earl of Stirling, created Sir John Browne, of the Neale, in the County of Mayo, a Baronet of Nova Scotia, on the 17th of June, 1636.*

We, William, Earl and Viscount of Stirling, &c., Proprietor of the Country of New Scotland and Canada, and His Majesty's Lieutenant within the same: Forasmuch as by the Feoffment granted to me, by our late Sovereign King James, dated at Windsor, the 10th of September, 1621, and by virtue of my original Infeftment, granted to me of the said Country and Dominion, by our now Sovereign Lord King Charles the First, dated at Oatlands, 12th July, 1625, I have full power to dispose of any part thereof to such as do undertake to plant there; and understanding the willingness of John Browne, Esq., eldest Son to Josias Browne, of the Neale, in Ireland, for the advancement of the said Plantation, we have granted unto the said John Browne, and to the heirs male lawfully descended of his body, that part of the said Country of New Scotland, bounded as follows, viz. Beginning twelve miles from the northernmost part of the Island Anticosti, within the Gulph of Canada, extending westward along the north side of the Island, six miles; and from thence northward, keeping always three miles in breadth; to have the Salmon and other Fishings, as well in salt as in fresh water; and I do hereby incorporate the said proportion of land into a Free Barony and Regality, to be called in all times the Barony and Regality of Neale, to hold the same by

the yearly payment of one penny, usual money of Scotland. And whereas I have full power and authority granted to me by His Majesty, to confer Titles of Honour within the said Country of New Scotland, upon all persons concurring to the advantage of the said plantation thereof; I do confer upon the said John Browne, and his heirs male lawfully descended or to be descended of his body, the hereditary dignity and style of Baronet of New Scotland, with all and sundry prerogatives, privileges, precedencies, conditions, and others whatsoever, that any Baronet of Scotland, or New Scotland, hath had at any time granted to them. And we give and grant unto the said Sir John Browne, licence to wear and carry an orange tawny Ribbon, the badge of a Baronet of New Scotland, bearing the arms of New Scotland in gold, enamelled, with the Crown Royal above, and this circumscription—*Fax mentis honestæ gloria*. Sealed with the Great Seal of New Scotland, 21st June, 1636.

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*Treaty of Utrecht, 11th April, 1713.*

Treaty, &c.—Art 12. Dominus Rex Christianissimus eodem quo Pacis præsentis ratificationes commutabunter die Dominæ Reginæ Magnæ Britanniæ, literas tabulasve, solemnes et authenticas, tradendas curabit quarum vigore insulam Sancti Christophori, per subditos Britannicos sigillatim de hinc possidendam. Novam Scotiam quoque sive Acadiam totam, limitibus suis antiquis comprehensam, ut et Portus Regii urbem nunc Annapolini Regiam dictam, cæteraque omnia in istis regionibus quæ ab iisdem terris et insulis pendent.—Reginæ Magnæ Britanniæ ejusdemque Coronæ in perpetuum, &c.

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*Extracts from an Assignment and Disposition from William, Earl of Stirling, to Mr. Alexander Kynneir, and Mr. James Gordoun, dated 29th of January, 1640, and registered 15th of February following.*

" In presens of the Lordis of Counsall comperit, Mr. William Forbes, procurator for William, Earl of Stirling, and gaue in the Assignatioun underwritten ; desyring the same to be insert and registrat in the Bookis of Counsall and Session, with ex-cutoricallis to pas theiron in maner specifeit theirintill the quhilk desyre, &c. quhairoff the tennor followis. Be it kend till all men be thir present letteris, We, William, Erle of Stirling, Viscount of Canada, Lord Alexander of Tullibody and Menstrie, Secretar to his Matie, for the kingdome of Scotland, ffor samekle as we have patentis grantit to us be his Matie. of Nova Scotia in America, and for disponsing and resigning of certain proportions of land yairof, and procuring to sundrie persons the infestmentis of the samin fra his Matie. with the honor and dignitie of Knychtis baronettis, have been in use to get fra every ane of the receavors yairof the soume of money of this realme, or yairby and siclyk, for samekle as we have obtenit fra his Matie. be his heines Letteris of Gift to ws, our airis and assignayis, the gift of the mariage of Francis, now Erle of Buchcleuch," &c. &c.

Reciting various proportions made over by the Earl—"That the foirnamet persons our Cautionaris for the debtis contenit in the said inventar be thankfullie releivet of yair cautionries and the debtis yairin specifeit payet to our Creditouris yarin nominat. Thairfor witt ye ws to have made, constitut, and ordanit lyk as we be the tennor heirof, mak, constitut, and ordain the said Mr. Alexander Kynneir, and Mr. James Gordoun, equallie betwixt yame, and proportionallie amongst yame, thair aires and assignayes, our very lawfull, undouttit, and irrevocable procuratouris, cessionaris, and assignayes donatouris, and procuratouris in rem suam cum dispositione libera. In and to the hail compositionis and sowms of money to be procured and received for the proportions of land in Nova Scotia, and dignitie



of Knyt. baronet fra quhatsomever persone or persons, ather in Scotland or Inglaad, and for admitting and receaving of quhatsomever persone or persons to quhatsomever Shireff Clerkschip, Stewart Clerkschip, or Baillie Clerkschip, within the said Kingdome of Scotland, and sic lyk, &c. And be thir presentis surrogattis, the foirnement persons and yair foirsaidis, in our full rycht, title, and place of the samin for ever, with power to thame to ask, crave, receave, intromet with, and uptak the hail compositions and sowmes of money to be received for procuring of the said dignitie of Knyt. baronet, fra quhatsoever persone or persons, &c. It is also heirby provydit, that the assignatioun foirsaid to the compositions and sowmes of money foirsaid to be received for the proportions of land in Nova Scotia, and dignitie of Knyt. baronet, sal be no let nor impediment to us to dispone and resign the said patent, ather to his Matie. or any other, the benefeit and sowmes of money to be gotten yairfor, being alwayes applyed to the payment of the debtis for the relieff of those quha ar ingadged as cautionaris for us," &c.—Gen. Reg. Deeds, Lib. 524.

THE END.



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